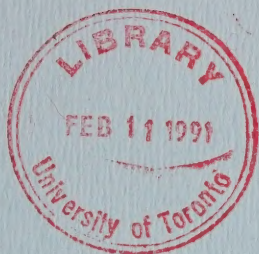


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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 284

DATE: Wednesday, January 30, 1991

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

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REPORTING INC.

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-H26



ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 284

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BEFORE:

A. KOVEN Chairman


E. MARTEL Member

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the offices of the Ontario
Highway Transport Board, Britannica Building,
151 Bloor Street West, 10th Floor, Toronto,
Ontario, on Wednesday, January 30th, 1991,
commencing at 9:10 a.m.

VOLUME 284

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT
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DR. T. QUINNEY)	OF ANGLERS & HUNTERS
MR. D. HUNTER)	NISHNAWBE-ASKI NATION
MS. S. BAIR-MUIRHEAD)	and WINDIGO TRIBAL
	COUNCIL
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MR. R. REILLY)	ABORIGINAL ASSOCIATION
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MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR

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MR. J. EBBS		ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
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MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
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MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>CHRIS MASER</u> , Resumed	50667
Cross-Examination by Ms. Cronk	50667
Cross-Examination by Ms Blastorah	50893
<u>PROCEDURAL SESSION</u>	50914

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1676	OFIA Interrogatory Question Nos. 9(b), 10(c), 11-14, 15(c), 17, 22, 23, 25, 26, 29, 31, 34, 36, 37, 39, 41, 42, 43, 44, 45 and 47 and supplementary interrogatories re: FFT Panel No. 6.	50670
1677	OFIA Interrogatory Question Nos. 8, 18, 20 and 27 and supplementary interrogatories re: FFT Panel No. 6.	50670
1678	OFIA Interrogatory Question Nos. 19, 32, 33, 38 and 40 and MNR Nos. 3, 7, 8, and 12(a).	50671
1679	Seven-page article entitled: On the Naturalness of Natural Areas, Perspective for the Future published in the Natural Areas Journal, July, 1990 by C. Maser.	50805
1680	Hand-drawn schematic of old growth in the landscape by C. Maser.	50811
1681	Extracts from book titled: <u>The Redesigned Forest</u> by C. Maser, submitted by OFIA.	50827
1682	Extracts from book titled: <u>The Redesigned Forest</u> by C. Maser, submitted by OFIA (Page 47).	50867
1683	MNR Interrogatory Nos. 1, 4, 5, 6, 9 and 11 re: FFT Panel No. 6.	50892

1 ---Upon commencing at 9:10 a.m.

2 MADAM CHAIR: Good morning. Please be
3 seated.

4 Good morning, Mr. Maser.

5 THE WITNESS: Good morning.

6 MADAM CHAIR: Ms. Cronk? Go ahead.

7 MS. CRONK: Good morning, Madam Chair,
8 Mr. Martel.

9 Good morning, Mr. Maser.

10 THE WITNESS: Good morning, Ma'am.

11 CHRIS MASER, Resumed

12 CROSS-EXAMINATION BY MS. CRONK:

13 Q. Mr. Maser, as I think you know, my
14 name is Eleanor Cronk and I represent the Ontario
15 Forest Industries Association here in Ontario and I do
16 have some questions for you as a result of the evidence
17 that you've given over the course of the last two days.

18 A. Yes.

19 MS. CRONK: But before I do that, Madam
20 Chair, if I might raise what I hope is a small matter
21 for consideration by the Board.

22 As it happens, the timing of commencement
23 of my cross-examination today coincides with an
24 engagement this evening unavoidably in another city
25 that requires me to be out of the city. It is of

1 several months long standing, I can do nothing about
2 it.

3 Having said that, I have spoken with Ms.
4 Blastorah and Ms. Seaborn and I think that the
5 implication of what I'm saying in practical terms is
6 this: I do not think that I will complete my
7 cross-examination of Mr. Maser today. With the Board's
8 permission which, I'm now seeking, I ask your
9 indulgence to leave at 3:30.

10 The Board had set aside in an earlier
11 ruling four o'clock today to receive submissions with
12 respect to other matters, so we're talking about an
13 interval of half an hour. Ms. Blastorah has kindly
14 agreed to use that time for the purposes of her
15 cross-examination and mine, I'm suggesting, would be
16 set down, the balance of it, so that the Board will
17 lose no time, and then I would complete mine tomorrow
18 morning.

19 If that causes no inconvenience to the
20 Board and is acceptable to you, I'm asking for that
21 indulgence.

22 MADAM CHAIR: Yes. That's fine, Ms.
23 Cronk.

24 MS. CRONK: Thank you.

25 MS. BLASTORAH: I'm sorry, Ms. Cronk, I

1 should just point out that Ms. Cronk and I discussed
2 this and my understanding is that Ms. Seaborn has no
3 cross-examination, and that we also discussed and
4 agreed between ourselves that I would of course
5 continue my cross-examination if I did not complete
6 after the end of the Industry cross-examination, and if
7 I did complete during that half hour, which I don't
8 expect, but I would have the opportunity to ask any
9 questions arising out of Ms. Cronk's cross-examination
10 at the end of Ms. Cronk's cross-examination.

11 MS. CRONK: Sorry, I didn't mean to imply
12 otherwise.

13 MS. BLASTORAH: No, I just wanted to
14 clarify that for the Board's sake.

15 MADAM CHAIR: That's fine..

16 MS. CRONK: Thank you. Madam Chair, if I
17 could begin by filing a number of interrogatories for
18 the record. They are in three packages, Madam Chair.
19 (handed)

20 MADAM CHAIR: Thank you.

21 MS. CRONK: The first package of
22 interrogatories, Mrs. Chairman, for the record are
23 comprised of Interrogatory Questions posed by the OFIA;
24 they are numbers 9(b), 10(c), 11, 12, 13, 14, 15(c),
25 17, 22, 23, 25, 26, 29, 31, 34, 36, 37, 39, 41, 42, 43,

1 44, 45 and 47. And where supplementary interrogatories
2 were submitted with respect to those questions, they
3 are included in that package as well.

4 And could I ask that that be marked as
5 the next exhibit.

6 MADAM CHAIR: That will be Exhibit 1676.

7 ---EXHIBIT NO. 1676: OFIA Interrogatory Question Nos.
8 9(b), 10(c), 11-14, 15(c), 17,
9 22, 23, 25, 26, 29, 31, 34, 36,
10 37, 39, 41, 42, 43, 44, 45 and 47
and supplementary interrogatories
re: FFT Panel No. 6.

11 MS. CRONK: The second package, Madam
12 Chair, contains further interrogatories by the OFIA;
13 they are numbers 8, 18, 20 and 27. And again, where
14 supplementary interrogatories were asked with respect
15 to those questions, they have been included.

16 And I would ask that that be marked as
17 the next exhibit.

18 MADAM CHAIR: Exhibit 1677.

19 ---EXHIBIT NO. 1677: OFIA Interrogatory Question Nos.
20 8, 18, 20 and 27 and
21 supplementary interrogatories
re: FFT Panel No. 6.

22 MS. CRONK: The third bundle, Madam
23 Chair, is comprised of interrogatories submitted both
24 by the OFIA and by the Ministry of Natural Resources.
25 OFIA Nos. 19, 32, 33, 38 and 40; and MNR Nos. 3, 7, 8,

1 and 12(a).

2 And I had ask that that be the next
3 exhibit.

4 MADAM CHAIR: Exhibit 1678.

5 ---EXHIBIT NO. 1678: OFIA Interrogatory Question Nos.
6 19, 32, 33, 38 and 40 and MNR
Nos. 3, 7, 8, and 12(a).

7 MS. CRONK: Q. Mr. Maser, I believe you
8 have a copy of each of those bundles; do you not?

9 A. Yes, Ma'am.

10 Q. That completes the housekeeping on my
11 part for the moment, Mr. Maser.

12 Mr. Maser, may I be clear at the outset,
13 and I invite you to correct me if I am wrong in any way
14 about the evidence that you've given.

15 Am I correct in concluding that in large
16 part, if not -- really in essence what you have been
17 doing over the last two days in the course of your
18 remarks and observations to the Board has been to raise
19 questions or cautions concerning many issues that you
20 think are relevant to the considerations of this Board?

21 A. Yes, I would say that's correct.

22 Q. And many of those questions
23 obviously, given your background and your experience,
24 are from an ecological point of view concerned with
25 issues from an ecological point of view that you think

1 the Board should be looking at?

2 A. As opposed to what other kind you
3 were thinking about.

4 Q. Any other you can imagine. I mean,
5 you're raising it in an ecological context and you have
6 these questions.

7 A. And a social context.

8 Q. And a social context?

9 A. That's correct.

10 Q. All right. Was it really the purpose
11 then to raise red flags, if you will, by way of posing
12 these questions so that the Board would have them in
13 mind and be alive to these issues when they deliberate
14 the evidence that they've heard?

15 A. In part. In part it is also to point
16 out that we who have been in science if we look at
17 science without a great deal of humility, I find it is
18 really dangerous and that the more I have studied and
19 worked in science the less I know, and I would suggest
20 that what we are doing is dealing with what we think we
21 know and not with what we know on any side.

22 What I find happening happens in the
23 United States too often, is a Forest Service and
24 industry over the years have been overly, should I say,
25 optimistic in what they think we can do with

1 technology, what they think we can do with
2 fertilization and other practices.

3 It works sometimes in some areas, it
4 doesn't work all the time as a blanket, but we tend to
5 look at these things as blanket practices. And I have
6 found that it is not ecologically or socially to my way
7 of thinking a prudent way to look at the world.

8 The longer I've studied the less I know.
9 And so the point that I've been trying to get across
10 is, there are no panaceas, there are no blankets and we
11 must look at both the ecosystem and our social
12 interactions with it with a great deal more humility
13 than we do at the present.

14 Q. And do I understand that to mean
15 essentially that you're saying there are no blanket
16 assumptions that we can make about these issues, there
17 is no generalization that should be accepted about what
18 is or is not fact?

19 A. The greatest generalization that I
20 would make is that from my experience working in
21 different countries and from the research that I have
22 done and the research I've shared with colleagues, the
23 only things that I could say would be -- I wouldn't
24 call them blanket, I say they're commonalities, is the
25 way ecosystems function, to the best of our

1 understanding, and that is what I have endeavored to
2 deal with.

3 The particulars may vary some from area
4 to area, but ecosystems and the ecosystem principles do
5 not recognize political boundaries.

6 Q. Your point in particular as I
7 understand it--

8 A. Ma'am, you interrupted.

9 Q. I'm sorry. Go ahead.

10 A. There was a biologist in Oregon, for
11 example, and we had been studying elk around his county
12 and we studied elk in this county, they studied in
13 Washington State and Idaho, but in his county, even
14 though the herds went into his county for the winter
15 that research didn't hold because that wasn't done
16 within his political boundary.

17 What I'm suggesting is, is that that is
18 not a valid way to look at the world. You can if you
19 wish, but ecosystems don't recognize boundaries, nor do
20 the principles.

21 Q. All right. And we'll come to that
22 because I have some questions about that.

23 A. Okay.

24 Q. In particular in science, given what
25 you have said about the fact that in your perception

1 the more you've studied the less you know, and the
2 complexities of it as you've described them, I take you
3 to be saying that in science - perhaps like in other
4 fields - but certainly in science, there are no
5 absolutes and we should concentrate on raising the
6 appropriate questions so that we're alive to what the
7 relevant issues are.

8 Is that a fair synthesis of what you were
9 saying?

10 A. Yes. I think we also have to be
11 careful that we don't get stuck in the social
12 constructs. Science is a very interesting endeavor in
13 that what is okay in science is okay within the
14 purviews of the social thinking, the social structure.

15 So science really is not objective. The
16 human being cannot be objective because we cannot hold
17 in our mind an objective thought, we are subjective
18 creatures.

19 I think science struggles to be objective
20 but, to be acceptable, the answers have to be within
21 what is socially acceptable at the time. If one sees
22 the world a little differently and looks at the answers
23 outside that social acceptability, then there is a lot
24 of resistance and a lot of criticism.

25 And this is a very interesting thing

1 because one of the things that I have noticed over the
2 years is what's called negative data or data that
3 cannot be replicated is generally not acceptable, but
4 it isn't the information that is not acceptable, the
5 problem is the methodology with which the information
6 has been gathered does not necessarily fit every
7 situation.

8 There is a gentleman by the name of Allan
9 Savory who works with rangelands and I have been out
10 with him a number of times and he has a certain method
11 of doing things and he tells the ranchers when it
12 works, he says: Now, you followed by instructions; and
13 if it doesn't work, he tells the ranchers: You didn't
14 do it right.

15 It isn't the rancher didn't do it right,
16 it's that the particular circumstances didn't make it
17 work according to the prescribed way of looking at it
18 which is acceptable, didn't happen to fit on that
19 rancher's place.

20 Q. So we mustn't pre-define either in
21 terms of methodology or the questions we ask to the
22 expected responses?

23 A. That is correct.

24 Q. All right. And did I understand you
25 to say to the Board that one of the issues that

1 scientists are looking at now from your perspective in
2 the United States today is the formulation of the
3 appropriate questions?

4 A. That's what we need to struggle with,
5 that's correct.

6 Q. And did I understand you to say to
7 the Board that that is very important because
8 formulation of the question can, of course, very much
9 influence, if not pre-determine, the nature of the
10 answer?

11 A. That is also correct.

12 Q. All right. Would you agree with me
13 in light of that that it is important for this Board in
14 determining what the appropriate questions are in this
15 jurisdiction, that they have before them the best
16 information that we collectively can provide to them to
17 assist in the task of defining what the appropriate
18 questions are?

19 A. Absolutely.

20 Q. And would you agree with me that it
21 is, in the context of these proceedings and what this
22 Board is required to do, the Board's function to decide
23 what the right questions are for forestry purposes in
24 northern Ontario today?

25 A. Absolutely.

1 Q. And similarly, it is their function
2 to determine whether questions which are determined to
3 be right or appropriate in other jurisdictions have, at
4 this time, application in northern Ontario?

5 A. Will you repeat that question,
6 please?

7 Q. Yes. Would you agree with me that it
8 is also part of their function to determine whether
9 questions that may be regarded as right or appropriate
10 in other jurisdictions are today right and appropriate
11 in northern Ontario, it's the Board's function to
12 determine that?

13 A. Well, it Certainly isn't mine, so I
14 assume it is theirs.

15 Q. And would you agree with me that it's
16 also appropriate that the Board must determine whether
17 the suggested questions are timely for northern
18 Ontario, whether they're appropriate issues to be dealt
19 with today?

20 A. I would assume so.

21 Q. Would it be fair to suggest then
22 generally, Mr. Maser, so that I have a conceptual
23 understanding, that what may be the right questions in
24 forestry in any particular jurisdiction from time to
25 time may or may not be the right questions in other

1 jurisdictions; that's a determination that has to be
2 made by each forestry centre or those responsible for
3 each forestry centre over time?

4 A. Let me rephrase that a little bit.
5 Different parts of the country are in different places
6 in terms of their social way of looking at the world,
7 they have negotiated a different reality with the
8 landscape.

9 The ecological questions that we are
10 beginning to ask are much more rigorous, far reaching
11 and less isolated from social values than the ones
12 we've asked in the past.

13 I think it's fair to say that not every
14 area of the country is going to be ready to ask all
15 those questions at the same time and timing in getting
16 ready to ask those questions is critical and each area
17 will come to that readiness in its own time.

18 Q. With the questions that they
19 determine to be appropriate to them?

20 A. That is correct.

21 Q. And would that also be true not only
22 with parts of each jurisdiction but from jurisdiction
23 to jurisdiction? I wasn't talking of parts of an
24 individual country?

25 A. That varies with individual to

1 individual. People get ready at a different time--

2 Q. Within any construct?

3 A. --within any construct.

4 Q. All right. And in terms of your
5 description, Mr. Maser - with which I'm not suggesting
6 any disagreement - but your description that in the
7 field of ecology what we're talking about is very far
8 reaching questions, broad questions, I understand the
9 nature of your evidence to be that that is particularly
10 so because the exploration of ecological issues is very
11 much tied up, in your view, with the exploration of
12 social issues, social conscience issues, philosophical
13 issues about what we as a society wish to achieve and
14 where we have come from in the past; would that be
15 fair?

16 A. That is fair, but I would take it
17 beyond that. It is also very much tied up in how we
18 view the world which is our cultural background.

19 Q. All right.

20 A. And it is very much tied up then in
21 looking at the ecological questions in dealing not with
22 special cases but with common denominators.

23 We tend to focus on special cases to
24 prove -- let me rephrase that for a moment. One of the
25 things that I see happening in the world today is that

1 we are not students of processe, we're advocates of
2 positions, and I would suggest that if we are going to
3 be ecologically wise and socially responsible, we must
4 become students of change and processes and give up
5 this notion of advocates of positions because it's not
6 winnable over the long haul.

7 I would also suggest that in looking at
8 commonalities across the spectrum of the ecosystem we
9 need to start taking these commonalities and
10 transferring what we see ecologically into management,
11 and that is very slow to come, it's also very
12 frightening. I mean, it's a basic change from the way
13 we've historically operated.

14 Q. Would you agree with me, Mr. Maser,
15 that there is nothing particular or unique about
16 ecology in that relation, that in any discipline or
17 field of human endeavor that need to be open to change
18 is something that thinking informed professionals would
19 recognize?

20 A. Thinking informed professionals, you
21 would have to add, I would say, open minded
22 professionals. I know a lot of thinking informed
23 professionals that are afraid of change.

24 Q. With that qualifi --

25 A. Now, wait a minute. The point that

1 I'm getting is, we need to be gentle with each other,
2 they are neither right nor wrong. I'm not -- I
3 understand what you're getting at, but I would like to
4 make a point with a piece of paper.

5 What I see happening today is, we look at
6 a piece of paper, and this obviously has two sides.

7 Now, let's just pretend for a moment that
8 you're on one side of the piece of paper and I'm on the
9 other and I say, I am right, that means -- and I write
10 that on my side and, therefore, on your side I write
11 you're wrong.

12 Now, if on your side you write I'm right
13 and on this side you write you're wrong, we're both the
14 same and we have accomplished nothing.

15 But if we take the same piece of paper
16 and understand it is not a set of dualities it's a
17 continuum, that if you look at the paper at this edge
18 it is connective, so this is a cycle this way and it is
19 a cycle this way, and any way you want to look at this
20 piece of paper, you or I, we are going to be right from
21 our points of view and our points of view are going to
22 be different.

23 So I think we need to avoid a contest of
24 points of view in terms of winning positions or being
25 committed to winning a point of view and say, how can

1 we step into each other's point of view to see this
2 more as a whole and then renegotiate how we see this so
3 we can come to an agreement. That's what I've been
4 saying these last two days.

5 Q. And with all of those qualifications,
6 do I understand you to be agreeing that in any field of
7 human endeavor there is the need to be open to change?

8 A. Correct.

9 Q. Not just ecology?

10 A. Correct.

11 Q. And would it be fair of me also to
12 suggest that in the course of explaining your views to
13 the Board and the work that you have done and your
14 perspective on these issues, you have drawn from a
15 myriad of disciplinary contexts, not simply science,
16 but as well, as you mentioned earlier, the social
17 context, one might say history, one might say
18 philosophy, anything that affords you to bring an
19 informed view to the issues that you are presenting to
20 the Board?

21 A. I would -- yes, I would say more than
22 an informed. My endeavor in my life has been to grow
23 and to become a whole human being, therefore, my
24 endeavor is to have as whole a view as possible and I
25 find the scientific view to be excruciatingly limiting,

1 narrow minded and isolated.

2 Q. Well, with that in mind - there are
3 too many scientists in the room for me to express any
4 opinion on, that that's not my province, Mr. Maser -
5 but with that in mind, would it be fair of me to
6 suggest that you have expressed views here to the Board
7 which fairly could be described as drawing from not
8 just the area of science but as well as sociology,
9 philosophy, history, indeed theology on occasion,
10 geography, climatology, on occasion the law, social
11 process, the whole myriad of disciplines?

12 A. Correct.

13 Q. All right.

14 A. Because to me they are all one,
15 that's being human.

16 Q. I understand. And would you agree
17 that that being the case that it would be, and in fact
18 is important for the Board in assessing what the nature
19 of your evidence has been, like they will be required
20 to do with other witnesses, to understand what your
21 qualifications and experience are to express the
22 opinions that you have given so that they can
23 understand the weight to be attached to your evidence
24 at the end of the day?

25 A. If that's deemed necessary.

1 Q. Well, all I am suggesting to you is
2 that when an individual expresses an opinion that draws
3 from areas as myriad as that, it becomes important to
4 know the source of the opinion, so that as thinking
5 individuals one can determine what weight to attach to
6 these things, it's that simple. Do you agree with
7 that?

8 A. Well, it depends on how you're going
9 to define that, because when you say weight, what
10 you're doing is either saying it's fits within a social
11 purview, therefore, it has weight or it's outside and,
12 therefore, it doesn't depending on training. You can
13 look at it that way if you wish.

14 Q. All right.

15 A. I don't happen to look at it that
16 way.

17 Q. Is there another way to look at it as
18 well and, that is, that it's important to understand
19 when a matter is strictly that of a personal opinion or
20 one that is grounded in a community of thinking in the
21 scientific community, it becomes important to know
22 that?

23 A. It may be important to know that, but
24 keep in mind, because it's community thinking doesn't
25 make it right, it only makes it conformative, and one

1 of the things that I have noticed is a lot of
2 experiments cannot be readily duplicated but that
3 doesn't make the data invalid, it simply means it can't
4 be readily communicated, and I will give you an
5 example.

6 We did some studies on nitrogen-fixing
7 bacterium passing through the guts of small mammals
8 which inoculate the soil, we worked on it for about a
9 year.

10 When we submitted it in fact to the
11 Canadian Journal of Zoology, we began to find that we
12 were having a lot of trouble getting papers published
13 that synthesized five different areas of discipline
14 into one whole, into an integrated study.

15 The reason was and the reason is - and
16 it's becoming increasingly more difficult - is that
17 professions, the professional societies and the
18 journals are becoming more and more split and narrower
19 and narrower and narrower in what they accept.

20 And the thing that I found amusing about
21 the review that we got was, a microbiologist reviewed
22 the paper and we had said in the introduction, to the
23 best of our knowledge from having searched the
24 literature this is the first time this has been
25 reported, and his comment was: Prove it, cite another

1 paper. And that tells me that the thinking is, unless
2 it has been done someplace by someone else and they
3 have gotten the same socially acceptable results,
4 within the scientific purview it isn't valid, and that
5 to me is utter nonsense, because that suggests that
6 nothing new can ever be introduced.

7 And so what I'm saying is, I think people
8 have to -- if you want to use the term judge, judge
9 things based on the merit of their authenticity, not
10 necessarily how society looks at it, because society
11 far too often is wrong.

12 Q. And all you're really saying, as I
13 understand it there, Mr. Maser, because it's novel
14 doesn't mean that it isn't right?

15 A. That is right correct.

16 Q. A new idea may be right.

17 But having that, would you acknowledge as
18 well the time-honoured tradition in science of the
19 merit of replication?

20 A. What will I honor about replication
21 is, is that replication sometimes shows culturally
22 acceptable answers and there are very valid answers
23 outside that and replication does not prove a thing. I
24 have seen replicated studies that end of being
25 erroneous because what they're replicating is the

1 methodology, not necessarily the answer.

2 Q. All right. I don't want to engage in
3 a long debate with you, Mr. Maser, because I'm not sure
4 that we're disagreeing.

5 All I'm suggesting to you, sir, is that
6 it becomes important whenever one poses questions as
7 being relevant issues to be addressed in the
8 decision-making process of any kind, it becomes
9 important to distinguish or at least recognize opinion
10 from fact so that one can judge accordingly, that's
11 all?

12 A. Ma'am, there is no such thing as
13 fact.

14 Q. There is no such thing as fact?

15 A. No. This is what I was trying to say
16 yesterday.

17 Q. I see.

18 A. Fact is a consensus among scientists,
19 it's a negotiated agreement. As I said yesterday, I
20 don't know scientific proof and I don't know scientific
21 fact because I don't know a scientific lie.

22 What I do know is, is we have continually
23 striven to look at things objectively and I have also
24 noticed that the great laws, like Newton's Laws of
25 Physics, no longer hold today because we see the world

1 differently.

2 A fact is not at fact because it's a
3 consensus, it's an agreement amongst individuals. And
4 so we negotiate an agreement and then we renegotiate an
5 agreement, and that's why there is no such thing as a
6 scientific truth, at least to my way of thinking of it.
7 A truth is absolute, it's not a relative thing, and
8 what we learn in science is always relative.

9 So I do not pretend to have facts, I do
10 not pretend to have the right answer, I'm not even
11 interested in the right answer, I'm interested in
12 having self honesty; if I am honest with how I perceive
13 the world, then the answers or my perceptions have the
14 greatest chance of being more right than wrong, and I
15 don't think anyone else in the world can do anything
16 else.

17 Q. So you're striving for probabilities,
18 the likelihood of right versus wrong?

19 A. No, Ma'am. I'm striving to know that
20 what I feel is right is honest. You see, you're trying
21 to put this in a quantifiable sense and I have found
22 that whenever you try to quantify something you lose
23 the relationship. You can look at something and say:
24 Well, this does this more than that, but you can't
25 answer the question why. And the question why is value

1 to the how much, the how much does not give value to
2 the why.

3 The other thing I have discovered is that
4 we tend to with statistics try to validate things we
5 don't understand because they fit some norm which we
6 can agree to and we agree to it, agree to it, and in
7 the project I've been working on now, the biggest
8 challenge we've had is trying to -- well, let me back
9 up, I will give you a very good example.

10 I was asked by the Environmental
11 Protection Agency in the U.S. to help them deal with a
12 problem or a program called the Environmental
13 Monitoring and Assessment Program, and it got bogged
14 down because the questions they were asking -- to
15 monitor an ecosystem - excuse me, am I going to fast -
16 the questions they were asking to monitor in the
17 ecosystem were human value questions; in other words,
18 how are we going to know if a stream is healthy, and
19 what they picked was fishability.

20 What that tells me, absolutely nothing
21 about the ecology of the system, that tells me nothing
22 about ecological balances, because to have it fishable
23 they had to rotenone the system and kill all the native
24 fish they could to have trout for heaven's sakes. Now,
25 what have trout got to do with ecosystem processes,

1 other than they sterilize the system to raise as many
2 trout as possible.

3 What I'm suggesting is that we need to
4 learn to look at the ecosystem as value neutral, to ask
5 ecological questions we cannot superimpose human
6 values, and that is what we do including in science at
7 times. Once we look at the system in a neutral sense
8 then we can superimpose the other questions on top of
9 it. Very often in science we're asking questions that
10 have a human value added to it up front and that biases
11 the answer.

12 The other thing we do is we average,
13 averaging straightens out the nice -- these blips which
14 we don't like, we deal with independent variables,
15 there is no such thing if you look at the time scale
16 broad enough. We also look at averages as adverse to
17 variability and the statisticians that I've been
18 working with - and I'm not a statistician, I don't
19 pretend to be, I can barely add and subtract - but the
20 statisticians I have been working with and the concepts
21 are struggling with the fact that the original
22 statistical design was set up as a probability model
23 and they're having a terrible time with the variability
24 of the ecosystem, they're trying to get rid of
25 variability.

1 So in intellectual isolation they can
2 single out one thing and say this is the independent
3 variable we are going to measure. That is utter
4 nonsense, because the variability of the variability
5 determines how that system functions.

6 If global warming is a reality, for
7 example, in the southwestern United States, that means
8 that south of our border, according to the projections,
9 we are not going to have any sub-Alpine or Alpine
10 habitat left. The effected elevation is going to lower
11 two to 3,000 feet. That kind of warming is going to
12 increase the frequency of fire.

13 Well, ponderosa pine in the southwestern
14 United States has a regeneration pattern that we call
15 episodic, it isn't an even, seeds are shed every year
16 but the seedlings don't grow every year, they come in
17 times of infrequent fires and increased moisture; in
18 other words, the regeneration is established in
19 episodes, then there comes a few fire years, and what
20 is created are forested stands, and ponderosa pine is
21 the variability, those variable peaks in fire frequency
22 and no fire frequency; in other words, the shifts, the
23 episodes of fire frequency in wet years.

24 But when we study fire frequency we
25 stretch it out into a chronology, we look at the

1 average fire years and say: Oh, this stand needs to
2 burn every five to ten years, that has been the
3 historical average, and what we're learning is that is
4 not what creates those stands, it's the variability
5 within those frequencies that create the stands.

6 Do you understand what I'm getting at?

7 Am I clear?

8 Q. Mr. Maser --

9 A. Am I clear?

10 Q. I think I'm quite clear on what
11 you're saying.

12 A. Okay.

13 Q. I no longer remember the question,
14 but I think I'm quite clear on what you have said in
15 the last few minute.

16 My point, sir, with all due respect was
17 much simpler. You may have all kinds of difficulties -
18 and I don't judge them in any way - with the
19 methodological ways that scientists approach various
20 issues and whether it's averaging and taking
21 variability as a single factor or a cumulative factor,
22 there could be all kinds of issues as a scientist with
23 which you take quarrel, for for legitimate or
24 illegitimate reasons.

25 All I was saying to you, quite simply, is

1 that when someone comes before a decision-maker of any
2 kind and professes an opinion that they are suggesting
3 should influence the decision of the decision-maker, it
4 behooves the decision-maker to judge where that opinion
5 is coming from and simply to understand the
6 qualifications and the expertise behind it. I don't
7 think that's arevolutionary proposition.

8 A. No, but it not the simple question
9 that you think you posed.

10 Q. You're disagreeing with that?

11 A. I'm disagreeing the question is
12 simple, I'm not disagreeing basically with what you
13 say.

14 Q. All right. I don't think think --
15 you think the question is more complex, but in essence
16 you're agreeing with me that that's so?

17 A. Basically?

18 Q. Fine, thank you. Then with respect
19 to your own situation, could I ask you to go to your
20 CV, please?

21 A. Mm-hmm.

22 MS. CRONK: Madam Chair, that is Exhibit
23 1666.

24 Q. Mr. Maser, as I understand it, your
25 formal academic training was in the area of vertebrate

1 zoology; is that correct?

2 A. Correct.

3 Q. And during the period 1965 to 1975 or
4 thereabouts your work was primarily in the field of
5 zoology?

6 A. In forest, with forest ecology. It
7 was basically forest ecology, it always has been.

8 Q. Right from the very beginning?

9 A. Yes.

10 Q. All right. And there was an
11 emphasis, if we review the entries during that first
12 10-year period, on matters particular to zoology, as
13 you've indicated, as they may affect the forest?

14 A. Mm-hmm, or the forest may affect
15 them.

16 Q. All right. And from 1975 to 1977, as
17 I understand it, you worked as a research zoologist for
18 the USDI Bureau of Land Management in Oregon?

19 A. That is the government title. I was
20 working in forest ecology.

21 Q. The government title was as a
22 research zoologist?

23 A. Yes, the series title -- understand,
24 I was the only scientist the Bureau of Land Management
25 had and the only title they had for research science

1 was zoology or botany, those were the only two. So
2 titles to me don't mean much.

3 Q. And from 1977 to 1981, the title that
4 you held was as wildlife biologist still with the
5 Bureau?

6 A. Right, same thing. They changed the
7 title, they it didn't change what I was doing.

8 Q. And from 1981 to 1987 you held the
9 title of a research wildlife biologist, still for the
10 Bureau, but I take it in a different office in Oregon,
11 Oregon State office; am I reading that right?

12 A. It was the state office.

13 Q. All right.

14 A. And so they changed the title again.

15 Q. All right.

16 A. The thing about the last part that
17 was interesting is, they asked me specifically, the
18 Forest Service and the Bureau of Land Management, to
19 tackle the old growth issue, and I was in charge of a
20 fairly large research program dealing specifically with
21 old growth.

22 Q. And that was during the years...?

23 A. '80 through whenever I resigned.

24 Q. You resigned, as I understand it, in
25 1987; is that correct, or thereabouts?

1 A. Yes, Ma'am, in '87.

2 Q. All right. So do I understand then
3 that insofar as you're concerned, really from the
4 beginning of your working career, you have been
5 involved in the area of ecology, your formal training
6 was in vertebrate zoology, and you've held various
7 positions described as a research zoologist or wildlife
8 biologist over the years?

9 A. My training was basically in ecology.

10 Q. Was it regarded as such at the time?

11 A. There was no such thing as ecology at
12 the time, it was a "budding field".

13 The others are titles that I was given
14 which -- and titles have nothing to do with the studies
15 you do. So if you want to concentrate on the titles,
16 that's fine, that doesn't bother me one way or the
17 other.

18 Q. I'm not diminishing or intending to
19 infer any diminishment, Mr. Maser.

20 A. No, all I'm saying, Ma'am, is that
21 the titles say nothing about what I've done and if the
22 titles are important to you, that's fine. They mean
23 nothing to me.

24 Q. All right. What I'm trying to
25 understand, sir, is whether you have a background both

1 in wildlife biology and wildlife zoology based on your
2 working career and your academic training, and I
3 understand the answer is yes?

4 A. Okay. I have had geology, I've taken
5 a lot of entomology, I have taken a lot of botany, I've
6 taken a lot of animal behaviour, I've taken a lot of
7 plant systematics, I've taken a lot of zoology,
8 herpetology, mammalogy, ornithology. I've had about
9 every ology I could find, including psychology,
10 sociology, et cetera.

11 Q. What's your degree in?

12 A. The degree is in zoology.

13 Q. All right. And then in 1987, as I
14 understand it, you resigned from the Bureau and you
15 went into private consulting?

16 A. And writing, yes.

17 Q. I'm sorry, I didn't hear you?

18 A. And writing.

19 Q. And writing.

20 A. Yes.

21 Q. And you did that for a couple of
22 years until 1990.

23 A. Yeah.

24 Q. All right. And then you joined the
25 Environmental Protection Agency in 1990?

1 A. I gave them a year.

2 Q. I see. It's a year contract or a
3 year's arrangement. Whatever the formality of it, it's
4 a year's arrangement?

5 A. I agreed to work for them as an
6 employee for one year.

7 Q. All right. And that started last
8 year?

9 A. Yes, it's up in April.

10 Q. All right. And as I understand your
11 CV and what you have said, you have had clearly from
12 the beginning of your career and throughout your career
13 to date a special interest in and pursuit of forestry
14 related issues in each of the positions you've held,
15 regardless of title. That's what you're telling us?

16 A. That's correct.

17 Q. Would it be fair of me to conclude,
18 however, that you have no formal academic training in
19 forestry?

20 A. Fortunately, yes.

21 Q. All right. And I understand your
22 evidence that you regard it as an advantage to never
23 have taken a forestry course--

24 A. That is right.

25 Q. --in the context of what you did?

1 A. I was not told what the right answers
2 should be.

3 Q. So the answer is yes?

4 A. The answer's yes.

5 Q. All right. Have you ever been
6 personally responsible, Mr. Maser, in an operational
7 context for the management of timber resources on any
8 defined land base of any size?

9 A. No.

10 Q. Have you ever practised as an
11 operational forester in the field?

12 A. No.

13 Q. Have you ever worked or lived in
14 Ontario?

15 A. No.

16 Q. And again, just so that I'm clear,
17 Mr. Maser, as to what information was made available to
18 you or what information base you had coming into this
19 hearing, have you studied or otherwise informed
20 yourself as to the timber management planning system in
21 use in northern Ontario at the current time?

22 A. Let's see if we can simplify this.
23 I'm not an expert in Ontario, and I know nothing about
24 Ontario forestry, I don't care to know anything about
25 Ontario forestry. I came here, as I said, in the very

1 beginning and I will read it:

2 "I am here to share my understanding
3 of data after more than 20 years as
4 a research scientist, this I will do.
5 I am not here to defend either myself or
6 my understanding and interpretation of
7 the data. I will, therefore, act in an
8 appropriate posture."

9 Q. And we'll come to that in a moment,
10 Mr. Maser, but as I understand it, you're reading from
11 the first premise that you set out in your response to
12 the interrogatories posed both by the Ministry of
13 Natural Resources and by the OFIA; is that correct?

14 A. Correct.

15 Q. All right. Is the answer to my
16 question then, yes -- well, I didn't put it in a yes or
17 no fashion. You have not studied--

18 A. No.

19 Q. --and I take it you are not familiar
20 with the timber management planning process in Ontario.

21 A. Not at all.

22 Q. As it has to date been employed or as
23 it may be proposed for amendment before the Board?

24 A. No, Ma'am.

25 Q. All right. And you understand, Mr.

1 Maser, I would like you to understand this from me,
2 that I am in no way being critical.

3 A. I understand that.

4 Q. But I have to know what information
5 was available to you when you offered the opinions that
6 you did to the Board.

7 A. Mm-hmm.

8 Q. Quite apart from the planning aspects
9 of it, do I understand what you just said about your
10 familiarity with Ontario to mean that you do not know
11 what timber management activities are in fact carried
12 out in Ontario yesterday, today or as proposed in the
13 future?

14 A. No, I do not. In fact, this is only
15 the second time I have been here.

16 Q. In Ontario or to Canada?

17 A. Ontario.

18 Q. In Ontario. The first time was for
19 the old growth symposium last year?

20 A. Yes, Ma'am.

21 Q. You have spent no time in the north?

22 A. No. As far north as I've been is
23 Fairbanks Alaska.

24 Q. Quite apart from what foresters
25 actually do in the field in Ontario or what the

1 planning regime is that they're obliged to follow, are
2 you familiar with the kinds of site conditions to which
3 they are exposed in their management activities, do you
4 know what the variability of site conditions and site
5 circumstances are in northern Ontario?

6 A. Well, Ma'am, if I haven't been here
7 how would I know that?

8 Q. There are other ways to gain
9 information, sir.

10 A. If I haven't looked at plans already
11 then how would I know that?

12 Q. The answer is no?

13 A. Yes.

14 Q. Mr. Maser, sir, do you regard
15 yourself as an expert in silviculture?

16 A. Ma'am, I don't regard myself as an
17 expert in anything.

18 Q. Do you regard yourself as having
19 worked in and having professional qualifications either
20 formal or informal gained over the years by work
21 experience in the area of silviculture?

22 A. I have changed silvicultural
23 practices in the United States by helping to infuse
24 ecology into them. If that is what you're getting at,
25 yes.

1 If I've gone out and I've planted trees,
2 if you call that silviculture, yes. If you're asking
3 me if I have worked as a silviculturist, the answer is
4 no.

5 Q. Similarly with respect to herbicides,
6 do you regard yourself as an expert in the use of
7 herbicides?

8 A. Ma'am, I told you, I don't regard
9 myself as an expert in anything.

10 Q. Do you regard yourself as having
11 particular professional or scientific expertise in the
12 use of herbicides?

13 A. In the use of them, no.

14 Q. In the use of insecticides?

15 A. No. What I do find, however, from
16 the studies we have done is that no one knows the
17 effects of them, cumulative or otherwise.

18 Q. And forgive me --

19 A. And to that extent I have testified
20 in court as the only expert witness the EPA -- the
21 Environmental Protection Agency had on 2,4,5-T, so I
22 have some familiarity with the fact that we don't have
23 any idea what the cumulative effect of herbicides,
24 pesticides, fertilizer or anything else is in the
25 ecosystem. That is the important part.

1 Q. And forgive me, Mr. Maser, that is
2 your view of the state of knowledge regarding the
3 impact of pesticides?

4 A. And lot of my colleagues, yes, but I
5 would say that is true.

6 Q. They're not here, let's just deal
7 with who is here. That's your view?

8 A. Yes, that is my view.

9 Q. All right. I would like to be clear,
10 Mr. Maser, on what your evidence is before the Board
11 concerning the old growth forest issue, and what I
12 understood your evidence to have been yesterday
13 afternoon particularly on this issue, and I would like
14 to understand, as clearly as I can, what it is that
15 you're proposing to the Board on the issue.

16 As I understand what you said, you were
17 saying -- well first, a basic principle that insofar as
18 you are concerned you can't define old growth, you can
19 characterize it; is that correct?

20 A. Correct. As an author I have
21 discovered that there isn't a single word in the
22 English language or any other language that I can
23 define because a word is a metaphor that reaches beyond
24 the limits of definition.

25 I wrote a book called The Ancient Forest

1 trying very desperately to define two words, ancient
2 forest. I couldn't do it because I couldn't define
3 life, I couldn't define death, I couldn't define soil.

4 Q. Do you admit --

5 A. So I have come to the conclusion that
6 all we can do with anything is characterize it.

7 Q. Do you admit to the possibility, Mr.
8 Maser, that others may have a different view?

9 A. Of course.

10 Q. And that definitions may be regarded
11 as entirely possible in other appropriate matters?

12 A. Sure.

13 Q. And obviously, as I understand what
14 you've said from your evidence, you regard old growth
15 as being certainly a particular stage in successional
16 development?

17 A. Looking at it from an ecological
18 point of view, I have been on several task forces where
19 we have struggled to characterize old growth. So, yes,
20 there are characteristics by which we have all agreed
21 to agree is old growth can be characterized. Defined
22 is something else.

23 Q. All right. And whether it's termed
24 characterization or definition, I'm not striving for
25 definition so that you're not in any doubt about that?

1 A. No, but they're very different things
2 is the point I'm trying to get across. Definition has
3 a social aspect, characterization doesn't.

4 Q. What I was suggesting to you, Mr.
5 Maser, is that when we think about old growth is it
6 appropriate to think about growth at the end or towards
7 the end of the successional stage in forestry?

8 A. Generally speaking.

9 Q. And would it be appropriate to
10 consider it as being a continuum and that old growth is
11 simply at one end of the continuum?

12 A. Yes, most definitely.

13 Q. And obviously what we're talking
14 about - and not to state it in any trite terms, but I
15 think it important that this be clearly understood -
16 what we're talking about is young growth at the
17 beginning, various stages of intermediate growth,
18 maturity or otherwise as we move along the continuum,
19 and ultimately to the last or the aged successional
20 stage, old growth, all on the same continuum?

21 A. It's in the same continuum, but there
22 is a marked difference in the fact that the old growth
23 in order to become old growth has survived an
24 incredible number of vagaries of the environment and it
25 is, therefore, the one that has the best wood and is in

1 the shortest supply.

2 It is also, looking at it in another
3 context, when it is gone it takes hundreds of years to
4 reproduce, therefore, if we liquidate that oldest stage
5 for whatever reason we may never get it back, and we
6 will not get it back in our lifetime or the lifetime of
7 several generations. Therefore, it cannot simply be
8 looked at in the social sense as the end of succession;
9 in the ecological sense it is.

10 Now, if you want to look at it outside of
11 the human purview, I agree with you entirely.

12 Q. No, I have trouble enough with the
13 human purview, I'm not going to try to graduate from
14 that one, Mr. Maser, certainly not in this hearing.

15 But you've said a number of things there.
16 You said old growth is the best wood, that it's in the
17 shortest supply, that it takes hundreds of years to
18 replace, that you can't get it back in our lifetime.

19 A. Mm-hmm.

20 Q. Would you agree with me that that
21 depends entirely on the part of the global landscape,
22 let's put it that way, what jurisdiction, what part of
23 the landscape you're talking about; in other words,
24 there are areas within which old growth is not in short
25 supply, where it does not take hundreds of years to

1 replace, and where you can get it back within perhaps
2 one or two generations?

3 A. No.

4 Q. It is not absolutely true in all
5 circumstances?

6 A. No, I can't agree with that at all.

7 Q. Sorry?

8 A. No, I do not agree with that.

9 Q. You do not agree with that. All
10 right. Then we'll come to talk about it.

11 Did you, for the purposes of giving your
12 evidence to this Board, inform yourself in any way -
13 you've said you've only been here twice, and I
14 understand you haven't spend any time in the north -
15 but did you inform yourself as to the nature of the old
16 growth that exists in northern Ontario; do you know
17 about that?

18 A. No. I assume, however, if it's black
19 and white spruce or any of those trees it's very
20 similar to the old growth in the interior of Alaska
21 which takes a very long time to grow.

22 Q. All right. So I understand the
23 answer to be no, but you've made some assumptions based
24 on your familiarity with old growth in Alaska?

25 A. That is correct.

1 Q. All right. As you do not know what
2 the nature of old growth is in northern Ontario --

3 A. Oh, wait a minute. Excuse me, Ma'am.
4 The nature of gold growth is the nature of old growth;
5 the nature of the ecosystem is something different.

6 Q. My question to you is this, and I
7 think it's important that we be clear about it.

8 A. Okay.

9 Q. Did you inform yourself as to the
10 nature and characteristics of the old growth existing
11 in northern Ontario for the purposes of giving your
12 evidence here?

13 A. Ma'am, the nature of old growth
14 whether it's in Alaska or Ontario are the same large;
15 large trees, as large as the species gets, large snags,
16 large dying trees, and large deadwood. Those are the
17 characteristics and they we found have been universal
18 throughout temperate coniferous forests around the
19 world. I don't have to go to Ontario to know that.

20 Q. And in that context large is
21 relative--

22 A. Large is relative.

23 Q. --depends on the species?

24 A. Correct. Elevation, latitude, et
25 cetera.

1 Q. Age is relative, depends on the
2 species?

3 A. Age is not relative, age is absolute;
4 if it's 200 years, it's 200 years.

5 Q. So that's one of the absolutes we do
6 have?

7 A. That is one thing we can come as
8 close to absolute as we can get, because we can count
9 the rings.

10 Q. All I'm saying to you, Mr. Maser, is
11 that you suggested, I didn't put it to you, you
12 suggested that old growth is characterized by taking
13 hundreds of years to replace, by being in the shortest
14 supply, and that it cannot be replaced within one, two
15 or even three generations.

16 And I'm suggesting to you that that is
17 not universally true and I will be suggesting to you
18 that that is not true in northern Ontario.

19 Now, do you know whether it's true in
20 northern Ontario; did you inform yourself about the
21 situation in northern Ontario?

22 A. Look, old growth may be abundant in
23 Ontario relative to other places, but if old growth
24 takes 200 years to grow -- lodgepole pine is old growth
25 at 80 years. That is the only one I know - because

1 that's when it starts falling apart - and that's in
2 good growing sites. That's the only one I know that
3 can be done in one generation from all the species
4 we've studied.

5 And I cannot believe, although I will
6 accept what you're trying to get at, I cannot believe
7 that the species you have operate differently in
8 Ontario than they do across the rest of areas and that
9 they're somehow different than the circumpolar
10 temperate coniferous forests.

11 If you're asking me, have I checked it
12 out in Ontario, the answer is no. What I'm telling you
13 is the commonalities are the same. The relative amount
14 of old growth in Ontario, I don't know.

15 I do know it does not reproduce itself in
16 one human lifetime, I do know it takes a long time and
17 it has the general characteristics of all the other old
18 growth we've looked at and our colleagues have looked
19 at around the world when we came up with the original
20 concept.

21 Q. Well, let me be clear about this
22 then. You did not inform yourself about the
23 characteristics of old growth in northern Ontario, that
24 is No. 1; correct?

25 A. If you're asking me, have I gone into

1 this little area you call Ontario and looked at it, the
2 answer is no.

3 Q. All right. Well, little or not, some
4 of us don't think it's so little, but the answer is no?

5 A. The answer's no.

6 Q. All right. That's No. 1. Secondly,
7 you do not know what the supply situation of old growth
8 is in northern Ontario?

9 A. No.

10 Q. Nor do you know what the cyclical or
11 successional rotation characteristics are of the old
12 growth in Ontario; is that correct?

13 A. If I have not been there I obviously
14 don't know.

15 Q. All right. So you have made some
16 assumptions about that?

17 A. Yes.

18 Q. All right. And I suggest to you that
19 without doing those investigations and without having
20 been there, you don't know either how quickly it can be
21 replaced; you're making some assumptions about that?

22 A. That I wouldn't agree with, because
23 if it's the same latitude across here, it isn't going
24 no grow much faster here than it is over here if it's
25 the same latitude.

1 Q. Do you know that, sir, or are you
2 just assuming?

3 A. If I'm looking at data in other
4 places, then I would say that -- well, of course, it's
5 going to be an assumption no matter how we look at it,
6 so if you want to say it's an assumption, I'll agree
7 it's an assumption.

8 Q. Do you in fact even know what species
9 there are in northern Ontario that produce, in the
10 context of discussion, in this province old growth?

11 A. All species produce old growth
12 depending on how you characterize it.

13 Q. Do you know what the predominant
14 species are in northern Ontario?

15 A. If I haven't been there, I don't
16 know.

17 Q. The answer is no?

18 A. Correct.

19 Q. Now, coming back then to what I
20 understand you have said to the Board about old growth,
21 can we go this far together, that old growth isn't
22 static, whatever it is, all right, it isn't static?

23 A. That is correct.

24 Q. Ultimately it runs out of energy and
25 it dies?

1 A. No, ultimately it shifts. It doesn't
2 run out of energy, it shifts to another successional
3 stage for a variety of reasons, I agree, but it doesn't
4 run out of energy.

5 Q. I didn't want to be too technical
6 about it, but I thought there was actually, in terms of
7 the scientific process, to use your word, that the
8 demands for respiration in a tree ultimately exceed the
9 photosynthesis process so that, in short, there is
10 insufficient energy produced and the tree dies?

11 A. No.

12 Q. That is not accurate?

13 A. They die of disease and injury.

14 Q. Oh, I see.

15 A. Not of old age, at least to the best
16 of our understanding.

17 Q. Does there come a point in time with
18 trees when the energy needs of the tree exceed the
19 energy being produced?

20 A. Not to my knowledge.

21 Q. I see. Can we agree that old growth
22 is not a separate ecosystem, that it's at the end of
23 the growth scale in the normal aging of the tree or
24 stand?

25 A. Well, that's a matter of definition

1 because I have never liked the ecosystem concept
2 personally, I see the world as an ecosystem, but for
3 convenience sake, managers and scientists divide the
4 world into ecosystems and the general concept is, old
5 growth is an ecosystem.

6 I personally don't happen to agree with
7 that, to me it's a continuum. So I would say it is
8 either in the black and white spruce ecosystem, but I
9 would not separate a stage out into an ecosystem,
10 though that is the way they're generally considered in
11 the literature and in research.

12 That happens to be something I don't
13 agree with. Maybe that's looking at it, again, in
14 isolation.

15 Q. Can something of and by itself
16 constitute an ecosystem?

17 A. That's the way it's defined
18 basically.

19 Q. I see.

20 A. They define a riparian ecosystem, but
21 a riparian ecosystem is dependent on the water and the
22 upslope where the water comes from, so to me these
23 concepts are nonsense.

24 But that is what people insist on looking
25 at it as, and I think it's a matter of convenience to

1 define an area we're going to agree to talk about, so
2 they talk about old growth ecosystems.

3 Q. And in your view that is an
4 inappropriate characterization?

5 A. Ecologically totally.

6 Q. All right. It would be more
7 appropriate to regard in the continuum terms that we've
8 discussed?

9 A. Mm-hmm.

10 Q. And not to characterize it as a
11 separate ecosystem?

12 A. Correct.

13 Q. All right. Is it also your view that
14 old growth can be created by man not just by natural
15 events?

16 A. I think it can, given enough time,
17 because old growth, as we understand it, is not a
18 structural stage it's a physiological stage, so I think
19 we can. No one has ever done it.

20 Q. Well, in theory if we left every
21 plantation that existed today alone, Mr. Maser,
22 wouldn't they all ultimately become old growth?

23 A. Quite probably, that's the way I look
24 at it.

25 Q. Inevitably, unless destroyed prior to

1 that by natural death?

2 A. Well, I wouldn't say inevitably. If
3 you stretch out Time long enough my answer's yes, but I
4 have seen areas burned several times where the ability
5 to reach old growth might take a thousand years. If a
6 thousand years doesn't bother you, then I agree.

7 Q. All right. Barring intervention of
8 natural even, if we left every plantation alone today?

9 A. It has the potential to become old
10 growth.

11 Q. Would it not inevitably barring
12 intervention of natural death?

13 A. You're asking me to make an
14 assumption.

15 Q. Yes.

16 A. I am assuming yes.

17 Q. All right. So in that context we are
18 in the course of, if you will -- I'm sorry. The fact
19 is then when viewed in that context that old growth can
20 be created by man over the course of time?

21 A. Yes.

22 Q. All right. And it's not a question
23 of --

24 A. That is assuming we don't destroy the
25 soil in the process and it can come back, yes, it

1 definitely can. In fact, if you remember, that was one
2 of the points that I made about managing and building
3 old growth into the landscape in the future, we are
4 going to have to be able to do that.

5 Q. And as I understood your evidence on
6 that issue, you believe that old growth should be
7 managed?

8 A. Yes, I do.

9 Q. Not in the same way -- I mean
10 conceptually it requires management in the same sense
11 that young growth requires it?

12 A. At some point we're going to have
13 recreate it in terms of management practices, correct.

14 Q. Well, leaving aside what the
15 management practices are--

16 A. Whatever they are.

17 Q. --the requirement of management is
18 universal or common to the two, young growth and old
19 require management?

20 A. When the native old growth is gone
21 the answer is, yes. Of the old growth that exists
22 today, we don't have to do anything to it, but if we do
23 not have it and we want to recreate, we must do it
24 through management.

25 Q. If it's to be conserved, it has to be

1 managed; doesn't it?

2 A. What do you mean by conserved. You
3 conserve something you have, and so if it's already out
4 there to be conserved, you do not have to manage it.

5 Q. If we were to ensure that it
6 remained.

7 A. Pardon me?

8 Q. If we were to ensure that it
9 remained, to protect it from natural intervention it
10 would require a form of management?

11 A. Well, I'm not sure that I would
12 protect it from natural intervention because that
13 destroys it in the long run. That is the point that
14 I'm getting at.

15 And what I was about to say was, doing
16 nothing to an acre is a valid management decision. To
17 maintain old growth as part of the landscape into the
18 future in a time that old growth has disappeared from
19 the landscape, we must manage it.

20 And so what I'm suggesting is we can
21 build it into the management scheme and it can be
22 managed, that doesn't mean it has to be manipulated, it
23 can be managed in the context of planning, of course.

24 Q. All right. And that's true whether
25 it's native old growth or man-created old growth?

1 A. Yes, mm-hmm.

2 Q. All right. Would you agree with me
3 as well as a general proposition that we must be
4 careful about applying generalizations to what is meant
5 by old growth because, as you said, for example, it's
6 almost in the eye of the beholder, what's old growth to
7 you might be one thing, what's old growth to another
8 biologist might be another; we have to be careful about
9 general characterizations of what constitutes old
10 growth?

11 A. The only characterizations I would
12 say that are as universal as any, based on the
13 commonalities of old growth that we have looked at from
14 around the temperate coniferous forests, is the ones
15 that I gave you. Beyond that, you can define old
16 growth any way you wish because you cannot define it.

17 Now, if you want to disregard the
18 commonalities, like large live trees, large dying
19 trees, large snags, and large logs, if you wish to
20 disregard those and say, I don't want to recognize
21 those, you can define it any way you wish or
22 characterize it any way you wish.

23 Q. All right. So what you're saying --

24 A. So all I'm saying is the
25 commonalities we've found and what we base a

1 characterization on, if you accept those, fine; if you
2 don't, that's up to you.

3 Q. All right. And when you talk about
4 the commonalities, you're talking about large snags,
5 large trees, large declining trees, those are the
6 features you're talking about?

7 A. Above ground.

8 Q. Yes. All right.

9 A. Yes.

10 Q. You are not talking about, given our
11 earlier discussion, the fact that it is in short
12 supply, that it takes hundreds of years to replace,
13 because that may or may not be true depending upon the
14 jurisdiction?

15 A. The jurisdiction, Ma'am, has
16 absolutely nothing to do with ecology.

17 Q. Depending on where it is?

18 A. On the area, yes.

19 Q. All right, fine.

20 A. But it does take a long time to grow.
21 The shortest old growth we have found anywhere is
22 lodgepole pine on good growing sites and that's 80
23 years. There may be others which are relatively short
24 compared to some others, to some other species.

25 Q. And you have indicated to the Board

1 earlier -- sorry. Mr. Maser, do you know or have you
2 been provided with information as to how much old
3 growth has been cut in northern Ontario; do you know
4 that?

5 A. Ma'am, no.

6 Q. Could I ask you to go to your witness
7 statement, please.

8 A. Mm-hmm.

9 Q. Exhibit 1665.

10 A. To what?

11 Q. 1665, your witness statement, that's
12 the exhibit number?

13 A. Okay.

14 Q. And could I ask you to look at page
15 19, please?

16 A. Mm-hmm.

17 Q. At page 19, Mr. Maser, I direct your
18 attention to the first full paragraph and, in
19 particular, the third sentence of the first full
20 paragraph beginning:

21 "Without significant amounts...", do you
22 see that?

23 A. Mm-hmm.

24 Q. All right. You've indicated in your
25 witness statement that without significant amounts of

1 old growth forest that are allowed to function in the
2 absence of direct human intervention, it is your view
3 that we eliminate learning, limit our knowledge and
4 greatly diminish our ability to predict.

5 Do you see that portion of your witness
6 statement?

7 A. Correct.

8 Q. All right. You refer there to
9 significant amounts of old growth and you're suggesting
10 that it should be immunized from direct human
11 intervention, as I understand it?

12 A. Yes.

13 Q. All right. And still on page 19, if
14 you could look -- perhaps you could look at the top of
15 the page, the phrase is used a number of times, but at
16 the sentence at the end of page 18 and carrying over to
17 the top of page 19 you say:

18 "Because the whole forest cannot be seen
19 without taking long views both into the
20 future and into the past, to lose the
21 remaining commercially available old
22 growth forest."

23 See that phrase, "...the remaining
24 commercially available old growth forest"?

25 A. Mm-hmm.

1 Q. Is to cause the problems that you
2 then suggest in your witness statement?

3 A. Right.

4 Q. Now, I take it from what your
5 evidence has been this morning that you do not know and
6 do not pretend in any way to know what the remaining
7 commercially available old growth forest of northern
8 Ontario are?

9 A. You mean in terms of amount?

10 Q. Yes.

11 A. No, no.

12 Q. And you were asked in the
13 interrogatories that were submitted to you to define
14 that term, that is, remaining...

15 A. The amount.

16 Q. The remaining commercially available
17 old growth forest. Could I ask you to go to the first
18 set of interrogatories that you were provided this
19 morning.

20 A. Mm-hmm.

21 Q. Exhibit 1676.

22 A. Well, I don't have an exhibit number
23 on it, but --

24 Q. Well, perhaps it would be of
25 assistance if you wrote it down on them so that we

1 won't have confusion today.

2 A. This one?

3 Q. Yes, the lengthy package is Exhibit -
4 do you have a pen - Exhibit 1676.

5 A. Okay.

6 Q. The second package, beginning with
7 Interrogatory No. 8, is Exhibit 1677.

8 A. Yes.

9 Q. And the third with Question 19 is
10 Exhibit 1678. Do you have that?

11 A. Okay.

12 Q. Okay. I'm referring to Exhibit 1676.

13 A. Mm-hmm.

14 Q. And I would ask you to go to
15 Interrogatory No. 40. They are numbered in the top
16 left-hand -- I apologize, Mr. Maser, I'm in the wrong
17 package here. It's in Exhibit 1678, I beg your pardon.

18 A. Okay.

19 Q. Interrogatory No. 40. Do you have
20 that?

21 A. I haven't found it yet.

22 Q. The numbers are in the top left-hand
23 corner. These are just extracts, Mr. Maser, from the
24 questions that were originally submitted to you.

25 A. Yes, I see that, but I haven't found

1 it. I'll get there. Okay.

2 Q. Do you have that?

3 A. Mm-hmm.

4 Q. All right. You were asked in this
5 interrogatory to define the term remaining commercially
6 available old growth forest in the context of the area
7 of the undertaking as that phrase is used repeatedly on
8 page 20, and we looked at it at page 19 of your witness
9 statement.

10 It does in fact appear in a number of
11 places on page 20; correct, of your witness statement?

12 A. Mm-hmm.

13 Q. And the answer provided was a
14 direction or invitation to look at premise 3 to the
15 interrogatories, and we will come to that in a moment.

16 Could I ask you in the same package to go
17 to Interrogatory 12(a) which is the MNR's
18 interrogatory?

19 A. 12(a).

20 Q. The same package, last page.

21 A. Oh, okay.

22 Q. Do you have that?

23 A. Yes.

24 Q. All right. You were asked by the
25 Ministry of Natural Resources the identical question,

1 to provide a definition of remaining commercially
2 available old growth forest. Do you see that?

3 A. Mm-hmm.

4 Q. All right. Now, there wasn't one
5 provided in the answer to Interrogatory 40, but there
6 was to the Ministry of Natural Resources and the
7 definition you provided was:

8 " Old growth forest that is commercially
9 available for cutting."

10 Do you see that, subparagraph (a)?

11 A. Right, mm-hmm.

12 Q. All right. Do I understand that to
13 mean that when you use the phrase remaining
14 commercially available old growth forest, what you mean
15 is old growth forest that are not restricted in any
16 technical sense from availability to commercial
17 enterprise?

18 A. That's right.

19 Q. And in - it's actually subparagraph
20 (b) but it's misnumbered - 12(b) of the interrogatory
21 you were asked whether the phrase commercially
22 available old growth forest had a special meaning in
23 the management system of the United States Forest
24 Service or in the Pacific northwest. Do you see that?

25 A. Mm-hmm.

1 Q. And the answer provided was that:

2 "Yes, it does."

3 And that that is essentially what I've
4 just suggested to you now, old growth that is not
5 protected in some fashion; correct?

6 A. Mm-hmm.

7 Q. So that throughout your witness
8 statement when you use that term, what you're referring
9 to is old growth not subject to some kind of a
10 protective measure or a restrictive measure in terms of
11 access by man?

12 A. No, not in terms of access by humans,
13 in terms of cutting.

14 Q. In terms of harvesting?

15 A. Right.

16 Q. I didn't mean road building, I meant
17 ability to reach and deal with?

18 A. I mean roading building and cutting,
19 I mean something that is disruptive to the processes of
20 the system.

21 MS. CRONK: Madam Chair, I note the time.
22 I don't know when you wish to take your morning break.

23 MADAM CHAIR: We can take it now, I
24 guess. We usually wait until 20 after, but if this is
25 a natural pause in your cross-examination--

1 MS. CRONK: It doesn't matter to me at
2 all, Madam Chair.

3 MADAM CHAIR: That's fine. The Board
4 will take 20 minutes.

5 MS. CRONK: Thank you.

6 ---Recess at 10:15 a.m.

7 ---On resuming at 10:40 a.m.

8 MADAM CHAIR: Please be seated.

9 MS. CRONK: Thank you, Madam Chair.

10 Q. Mr. Maser, just before I forget to
11 ask you, you mentioned a few minutes before we took the
12 break lodgepole pine.

13 A. Yes, Ma'am.

14 Q. Is that similar to jack pine?

15 A. I assume it's somewhat similar, yes.

16 Q. Do you know whether it's - it being
17 lodgepole pine - is more long lived generally speaking
18 than jack pine?

19 A. No, Ma'am.

20 Q. No it is not, or no you don't know?

21 A. No, I don't know.

22 Q. Now, Mr. Maser, we were talking about
23 pages 19 and 20 of your witness statement being Exhibit
24 1665 and certain of the interrogatory responses that
25 you had given. Could I ask you --

1 A. Excuse me one minute, which one,
2 1665?

3 Q. Your witness statement.

4 A. Oh, okay.

5 Q. Do you have that exhibit number on
6 it, maybe it would be a good idea.

7 A. I do. I've just got so many numbers
8 in front of me now I didn't hear you clearly.

9 Q. We were at page 19 and 20 of your
10 witness statement.

11 A. Okay.

12 Q. And we had been discussing what you
13 mean in your use of the term the remaining commercially
14 available old growth forest, and we looked at an
15 interrogatory response that you had given in that
16 regard. Do you recall that?

17 A. Mm-hmm.

18 Q. Now, at page 20 you again refer
19 actually five or six times to the remaining
20 commercially available old growth forest.

21 A. Mm-hmm.

22 Q. But you also refer in the middle
23 paragraph on that page, and I direct your attention to
24 the last sentence, in which you say:

25 "Is it not, therefore, wise to carefully

1 consider whether saving substantial
2 amounts..."

3 A. Mm-hmm.

4 Q. "...substantial amounts of well
5 distributed old growth forest is a
6 necessary part of the equation for
7 maintaining a solvent forest industry?"

8 A. Mm-hmm.

9 Q. And stopping there for a minute, that
10 I take it is one of the questions that you're raising
11 for consideration by the Board?

12 A. Correct.

13 Q. All right. And you refer there to
14 substantial amounts, having referred on page 19 to
15 variously significant amounts and the remaining--

16 A. Right.

17 Q. --commercially available old growth
18 forest. Now, as I understood your evidence to Mr.
19 Lindgren yesterday, you indicated that you did not
20 think that all of the old growth need be set aside in
21 this jurisdiction.

22 Did I understand your evidence correctly?

23 A. I don't know how much there is, so--

24 Q. And therefore it follows...?

25 A. --therefore, I do not have an

1 opinion. I am not an expert here. If I don't know how
2 much there is, I do not know -- let me put it this way:
3 Saving old growth for whatever reason, you have to have
4 a reason to do it, and that reason determines what is
5 sufficient.

6 If you want to save old growth as they
7 have in the western United States as spotted owl
8 habitat, that is one type of distribution; if you want
9 to save old growth as a laboratory to learn how to
10 replace old growth over time, then you would a
11 different distributin or amount distributed over the
12 landscape.

13 Unless I would know why you wanted to
14 save it, I would have absolutely no business telling
15 you how much or where or anything, so...

16 Q. And you're not?

17 A. So I'm not making a judgment, no.

18 Q. On either amount or where?

19 A. Correct.

20 Q. All right. Now, so that I'm clear
21 about it, Mr. Lindgren specifically asked you yesterday
22 afternoon whether, in your view, all old growth need be
23 set aside as you were talking about set aside areas?

24 A. Mm-hmm.

25 Q. Do you recall that. And your answer

1 as I wrote it down was, no, I don't believe I can say
2 that.

3 A. That's correct.

4 Q. All right. So is that your evidence
5 then?

6 A. Yes.

7 Q. All right.

8 A. See, for me to be able to say that, I
9 would have to see it so I would have an opinion. What
10 I'm trying to say is, 'Im not an expert here, I haven't
11 been here, I have no opinion. So my answer is, no, I
12 can not make that statement.

13 Q. Quite right. All right. And all of
14 this discussion at pages 19 and 20 and following in
15 your witness statement and then yesterday afternoon as
16 you elaborated upon it to the Board, as I understand
17 it, relates to your suggestion that natural areas
18 comprised in part at least of old growth should be set
19 aside for study or research purposes; is that correct?

20 A. I cannot -- I would -- again as I
21 suggested yesterday, it is beyond my purview in any way
22 to say what should be done in Ontario. I think it is a
23 wise thing to do, but I cannot tell you and would not
24 pretend to tell you what to do. It should, is a what.

25 Q. All right. Well, that's important

1 for me to understand. So you are not saying then that
2 in this province in respect of northern Ontario it is
3 your opinion to this Board that old growth areas,
4 natural areas including old growth, should be set
5 aside; you're not saying that?

6 A. I cannot say that. No, I am not
7 saying that.

8 Q. What you're saying is that it is your
9 opinion from an ecological point of view that that may
10 be a wise thing to do?

11 A. Ecologically and socially I believe
12 it would be a wise thing to do, yes.

13 Q. All right. Now, so all of the
14 discussion in your witness statement and the evidence
15 you gave yesterday afternoon concerns that viewpoint,
16 that question?

17 A. Mm-hmm. Nothing that I have said in
18 anything could be construed as something that I believe
19 should be done in Ontario, period.

20 Q. With respect to old growth, or with
21 respect to the balance of your evidence as well?

22 A. With respect to anything. I have no
23 right to tell anyone else, especially in another
24 country, what they should do. That is not -- I am not
25 wise enough for that, for one thing.

1 Q. Well, leaving aside the issue of
2 entitlement, whether you have the right to do or not,
3 Mr. Maser - let's set that one aside for the moment -
4 do I understand you now to be saying that when you
5 offered your opinions through the course of the last
6 two days to the Board you were in no situation
7 suggesting what should or should not occur in this
8 province?

9 A. That is correct.

10 Q. So that when you were saying, for
11 example - a totally different issue, we'll come to talk
12 about it later - but when you were suggesting, for
13 example, or when you made certain observations
14 regarding clearcut, when you made certain observations
15 regarding full-tree harvesting methods, do I understand
16 you now to be saying - perhaps you were saying all
17 along, I don't mean any inference from that - what I
18 understand you now to be saying that you were not
19 intending in any of that evidence to be suggesting what
20 practices should or should not be followed in this
21 province?

22 A. That is correct.

23 Q. And you make no judgment about that
24 not being aware of what in fact the practices are?

25 A. That is precisely why I don't want to

1 know ahead of time, because if I know, then I cannot
2 help being human in making a judgment, and I endeavor
3 to make no judgments.

4 Q. Are you saying, Mr. Maser, that you
5 made the deliberate decision not to inform yourself of
6 the facts concerning northern Ontario so that you would
7 not be in a position to make judgments about it?

8 A. That is correct.

9 Q. I see. So it occurred to you that
10 you might do that and you decided not to?

11 A. I never do that, because I cannot be
12 unbiased otherwise.

13 Q. And in this particular case it
14 occurred to you that you could, but you decided not to?

15 A. That is correct.

16 Q. I see. Then with respect to the old
17 growth issue, if we can come back to that, if I
18 understand what you're saying on that issue - and I
19 want to be clear about what the proposal is because, of
20 course, I have to get instructions on that and deal
21 with it from my client's point of view - as I
22 understand what you're saying, and please tell me if
23 this is an accurate summary of what your evidence is,
24 you don't know how much old growth we have in northern
25 Ontario?

1 A. Correct.

2 Q. You don't know how much of it we've
3 the harvested?

4 A. Correct.

5 Q. You don't know how much of it should
6 be set aside and you're not pretending to tell the
7 Board how much should be set aside?

8 A. Correct.

9 Q. In fact you're not even telling the
10 Board that it should be set aside, you're simply
11 raising the question to be considered?

12 A. Correct.

13 Q. And you raise the question in the
14 context of saying in principle for ecological research
15 purposes this is something you should look at?

16 A. Correct. Not you should look at, I
17 think it would be wise to look at. I would prefer
18 leaving shoulds out of it altogether, if we can.

19 Q. All right. And I wish to be clear
20 about what your evidence is on this set aside concept,
21 all right, because I confess to you that there were a
22 number of us who worked together on this who left and
23 my understanding was not - through clearly my own
24 fault - theirs and, therefore, I want to be clear as to
25 what in fact you were saying.

1 As I understood it you made two
2 propositions to the Board. If I can deal with the
3 first. That first proposition - again, please correct
4 me if I'm wrong - was that natural areas, to use your
5 language, that it would be wise that natural areas be
6 set aside comprised of native old growth. That was the
7 first proposition?

8 A. Well, let's get the natural area out
9 of it. I was asked specifically about natural areas.

10 Q. Yes, you were.

11 A. Natural areas have a very carefully
12 defined research point of view. I wouldn't restrict it
13 to the natural areas. I think old growth can be set
14 aside serving the same purpose as natural areas.

15 If you wish to have some natural areas
16 with the specific purview, by all means, but I would
17 suggest that there are other areas of native old growth
18 that could be set aside that could have some uses in
19 them, such as hunting or trapping, something which is
20 non-destructive which I would not set those rigid
21 limits on, which would round out a system of native --
22 "areas of native forest" as genetic gene pools as we
23 discussed for research, as a blueprint to learn how to
24 recreate old growth if necessary, and I would build
25 into those, if you already have protected areas, I

1 would include those as part of this network.

2 Q. All right. Well, I'll come to that.

3 A. The natural area is very restrictive
4 and I do not think that is wise.

5 Q. You do not think it's wise?

6 A. To have strictly natural areas, no.

7 Q. All right.

8 A. Because you cannot learn -- natural
9 areas are not set up specifically also to learn how to
10 manage old growth in the future.

11 Q. Let's be clear what we're talking
12 about, Mr. Maser, so that there's no confusion in this
13 discussion between us, all right.

14 When you use the term natural area, which
15 was the term that was used in your evidence yesterday
16 afternoon, you were asked questions about that.

17 A. Right.

18 Q. The term was put to you.

19 A. Right.

20 Q. When you use that term, does that
21 have a particular meaning in your jurisdiction?

22 A. It does.

23 Q. All right.

24 A. A very specific meaning.

25 Q. All right. And what is that meaning,

1 please?

2 A. That is an area that is set aside
3 that can have no entries in terms of logging, salvage,
4 roading, et cetera. In fact, we've had a discussion
5 over the years whether even prescribed fire should be
6 reintroduced.

7 This is one of the arguments our National
8 Park system has had. When you set an area aside - and
9 it's a critical question - when you set an area aside,
10 are you setting it aside to maintain the plant
11 community or the animal community. As it is now, which
12 means that you must introduce whatever prescribed fire
13 or management is necessary to maintain that or are you
14 just going to let it go and do whatever it does and
15 exclude fire or let fire burn.

16 So the jurisdiction of a natural area is
17 a very narrow thing, and I think that needs to be set
18 out very carefully for specific purposes.

19 But there may be other areas of native
20 forest that would be set aside specifically to retain a
21 semblance of the gene pool where you may want to gather
22 cones to do experimentation in something else; in
23 raising, let's say, native stock that you would like to
24 replant which is adapted to the site, or you would like
25 to do a little bit of destructive sampling in order to

1 learn from, and have a loser jurisdiction.

2 Q. I'll come to the purposes in a
3 moment, but so that I'm clear, do I have it then that
4 when you gave your answers to Mr. Lindgren yesterday
5 using the term natural area, you were using that term
6 in the context of the U.S. definition that you just
7 described to the Board?

8 A. Yes, and I was simply answering a
9 question in terms of natural area, not in terms of the
10 broader --

11 Q. The difficulty, you'll understand, is
12 that perhaps that wasn't explained. All right.

13 A. Right.

14 Q. So that natural area in that context,
15 in the context of your evidence, meant areas in which
16 no entries of any kind for any use, purposes were
17 permitted?

18 A. That is correct.

19 Q. Whether it was a timber purpose or
20 otherwise?

21 A. No, not otherwise. Research, as long
22 as it's non-destructive, education as long as it's
23 non-destructive.

24 Q. No hunting.

25 A. In some cases you could hunt, but

1 generally that is disdiscouraged, yes.

2 Q. And certainly no commercial entries
3 of any kind?

4 A. That's correct.

5 Q. All right.

6 MADAM CHAIR: Excuse me. Mr. Maser.

7 THE WITNESS: Yes, Ma'am.

8 MADAM CHAIR: In Oregon, which is the
9 area you're most -- you've done the most work, can you
10 give the Board some idea of how large these natural
11 areas would be? Would they be in the order of
12 thousands of square miles?

13 THE WITNESS: No.

14 MADAM CHAIR: Hundreds of square miles?

15 THE WITNESS: We don't have that much
16 forest left. We have some that are in the order - and
17 I have to give it to you in acres, I don't translate
18 well in hectares - we have some that may be if it's
19 oldest left and best we could get, maybe 50 acres, we
20 have some that may be up to 3,000.

21 We started this so late in our management
22 scheme and because -- you see, you have an advantage we
23 don't, you don't have the tremendous fragmentation that
24 our cutting scheme has brought into being, and so long
25 before they began running out of timber in areas, that

1 landscape is so fragmented we couldn't get big
2 contiguous areas. So we have a minimal system in terms
3 of acreage.

4 MADAM CHAIR: So it's a very small per
5 cent of the total forest area?

6 THE WITNESS: That is correct, yes.

7 MS. CRONK: Q. How much in total, do you
8 know, Mr. Maser, or just in Oregon?

9 A. No, because I have not been
10 associated with the natural area program for the last
11 10 years and I don't know what they've done. I helped
12 start it, but I have now been out of it, so I can't
13 answer that.

14 Q. So when you said yesterday afternoon
15 in response to questions that you were asked that you
16 would propose that natural areas be set aside comprised
17 of at least in part native old growth forest, we
18 should -- that is changed today, by the clarification
19 that you have given, and am I right that that first
20 proposition that you made becomes this: That you are
21 proposing that areas of native forest, including native
22 old growth forest, be set aside?

23 A. Yes. I would have all successional
24 stages, definitely.

25 Q. All successional stages.

1 A. If I were doing it, if you gave me a
2 map and said: Design an area for us with no holds
3 barred that we can have a representation of the genetic
4 pool scattered across the landscape, we can have our
5 areas specifically for research, we can have areas that
6 have other reasons, the natural areas would be the most
7 restrictive, but I'm not thinking just of old growth, I
8 look at ecosystems, old growth are just one small piece
9 of it.

10 Q. Let me be clear then about the number
11 of propositions, and I would like to discuss each in
12 turn.

13 A. Okay.

14 Q. But the first, as I understand it, is
15 what we have just discussed.

16 A. Right.

17 Q. And that is, the setting aside of
18 native forest areas?

19 A. Right.

20 Q. Including a number of successional
21 stages, in part old growth?

22 A. Correct.

23 Q. That's the first concept?

24 A. Correct.

25 Q. All right. And was that for

1 monitoring purposes for the benefit of the future, or
2 for research purposes, or are the two are the same?

3 A. The two are the same. It was also to
4 maintain a bank of native genetic diversity, and the
5 thing is, if it is done the way that we are now
6 discussing, the young growth as we were talking about
7 eventually becomes old growth, so the native old growth
8 could be projected centuries into the future.

9 Q. All right. And I'll come back to
10 that progression of time with implication of the
11 proposition.

12 But this is my confusion, Mr. Maser, and
13 I'd ask you to clarify it for me, I understood you to
14 tell Mr. Lindgren yesterday with respect to these
15 areas--

16 A. To old growth. To the natural areas.

17 Q. All right.

18 A. Are we talking about the natural
19 areas or the native forest?

20 Q. I'm sorry, I thought you told me they
21 were now the same. Let me back up. Do I understand
22 your proposition to be that setting aside of native
23 forest areas--

24 A. Right.

25 Q. --including all successional stages?

1 A. Right.

2 Q. All right. And when you talked about
3 natural area yesterday, is that what the Board should
4 now understand you mean?

5 A. No. Let's try this again. A natural
6 area is a very restrictive use of an area, so we are
7 talking about an area of native forest; a natural area
8 is a definition of use of that.

9 Q. You're not proposing set asides of
10 that kind in this jurisdiction?

11 A. No. What I'm saying is --

12 Q. A restricted use area?

13 A. What I'm saying is, it seems to me it
14 would be wise to set aside areas of native forest.

15 Q. Exactly.

16 A. Some of them can be designated as
17 natural areas in a very restrictive sense, if you wish,
18 but they do not have to be. Okay. Are we clear now?

19 Q. Yes, thank you.

20 A. Okay.

21 Q. So your proposition is the setting
22 aside of native forest areas, some of which may have
23 restrictive use or entry designation, some of which may
24 not?

25 A. If that is desirable, that is

1 correct.

2 Q. All right. You are not suggesting
3 that it is or it isn't, one way or the other?

4 A. No.

5 Q. Let's just deal with the set aside of
6 native forest area then.

7 A. Okay.

8 Q. All right. I understood you
9 yesterday to tell Mr. Lindgren that you would recommend
10 that the location, the distribution of those areas be
11 on places where - and as I wrote your words down -
12 where we would most like to grow trees.

13 A. That would be included.

14 Q. Just hear my question, first.

15 A. Oh, I'm sorry, I thought you were
16 finished.

17 Q. Where we would most like to grow
18 trees, which said to me the most productive sites. Was
19 it your intention to say to the Board that you would
20 recommend that these set aside areas of native forest
21 be on the most productive lands?

22 A. Some of them, not all of them.

23 Q. All right.

24 A. What we have done is exclude the most
25 productive lands and the argument has been, but you

1 have lots of wilderness, doesn't that work. In our
2 country, which is different than yours, the answer is
3 no, because the most productive lands are at sea level
4 to 1,000 feet and most of our wilderness is above 4,000
5 feet and they're totally different.

6 Q. So when you say in your country,
7 again, are you referring to the Pacific northwest when
8 you make that statement?

9 A. Yes, the mountains.

10 Q. It gets confusing, it's a big
11 country. You're talking about the Oregon area?

12 A. The Pacific northwest or the Rocky
13 Mountains for that matter.

14 Q. All right. So in the Pacific
15 northwest then these set aside areas are not located on
16 the most productive forest lands?

17 A. Some of them are, but they're the
18 smallest acreages because we couldn't grab very much of
19 it. It was no longer there.

20 Q. And whether it's there or not, you'd
21 agree that it's a more difficult proposition to have
22 set aside areas of that kind when you're talking about
23 the most productive forest land on the landscape?

24 A. Yes, in the shortterm in the long
25 term, economically and ecologically I think it's a very

1 wise thing to do. So while it is more difficult
2 politically today we discovered, over time I think it
3 buys a tremendous amount in terms of an insurance
4 policy for the future.

5 Q. And is that true assuming that over
6 time they become available to use?

7 A. The native areas which are taken out
8 now, we will not -- they are out of the cut base now
9 but they will eventually go through their successional
10 stage and those acres will no longer be old growth,
11 they will go back to early succession.

12 At that point I would recommend they're
13 put back in the cut base because, as I envision, the
14 only way this could work would be building old growth
15 into the landscape that is part of the management which
16 is on rotating basis in time and space.

17 So I'm uncomfortable when they say set
18 aside because that takes it out of the management
19 jurisdiction, and I don't believe that is viable. I
20 think it needs to be part of the management design,
21 part of the planning system, but with a specific
22 management - what would we call it - designation, and
23 that it isn't out of the cut base, period, it is out
24 for a number of years, then it can be put back in and
25 this area goes out.

1 Q. All right. Well, that's very
2 helpful. I had some questions for you about that. So
3 what we're really talking about then, in terms of the
4 proposition that you're making to the Board, are
5 specific areas of native forest identified for research
6 purposes?

7 A. Or as part of a genetic bank, yes,
8 for that kind of purpose, correct.

9 Q. All right. And my confusion arose
10 because I had understood you to say to Mr. Lindgren
11 that you would select those on the most productive
12 forest sites - and you've explained your evidence about
13 that - and then I also understood you to say that you
14 would have these set aside areas where the soils needed
15 to be repaired.

16 Do you recall saying that, that the soils
17 needed to be repaired?

18 A. Yes. Those are not set asides to me,
19 that's simply an extended rotation. In other words,
20 rather than having -- I don't know what your rotations
21 are, but let's say they're a hundred years, and if it
22 is decided or determined that on a given area after one
23 or two rotations that the soil is beginning to be
24 exhaustive or it is declining for whatever reason and
25 it is determined that it needs to rest - I mean, when a

1 horse gets tired we rest it; the soil is no different,
2 when it gets tired it needs rest - that you would then
3 put that in an extended rotation with the idea of
4 cutting it at the end of that rotation, but it will be
5 a long rotation which would allow the soil nutrients
6 and the processes to recapitalize and to heal, it would
7 put the biological reinvestment of the organic material
8 back into the soil, and when that was complete it would
9 then be scheduled to be cut again.

10 Q. All right. So you were not talking
11 about separate reserve areas or separate set aside
12 areas in that context, but rather extended rotations?

13 A. That's right, in the management
14 sense, initially the native forest would be "set
15 aside". Once it has served its purpose, it would then
16 be put in on a rotational basis and, in a management
17 sense, we would learn to create old growth through long
18 rotations. They would be in the cut base, but the
19 schedule of cutting would be different.

20 Q. All right.

21 MADAM CHAIR: Excuse me. So on the
22 latter point the extended rotation wouldn't go through
23 every successional stage necessarily, you wouldn't wait
24 for an area to become old growth and then...

25 THE WITNESS: Yes, that is exactly what

1 you would do.

2 MADAM CHAIR: You would do.

3 THE WITNESS: The extended rotation --
4 see, in a short rotation it does not get to old growth,
5 and that is the area where we do -- because we can't
6 help it, we do the damage to the system, particularly
7 belowground.

8 To allow that to heal we must have an
9 extended rotation so it gets beyond that and it can
10 rest and then it be cropped again.

11 MADAM CHAIR: What you're saying, it
12 would be a complete successional stage.

13 THE WITNESS: Allow it to complete its
14 successional cycle, yes. And in some areas that may be
15 200 years, in some of our areas it may take four.

16 MR. MARTEL: I was going to say, how do
17 you follow that, how do you assess that?

18 THE WITNESS: When it's finished?

19 MR. MARTEL: Yes.

20 THE WITNESS: I can't answer that because
21 I haven't lived that long. What we have done is set
22 some of these areas up, again, on an experimental basis
23 and we have documented how we have done it, so that
24 some generation does get the answer.

25 My guess is, and this is only a guess, my

1 guess is that when the productivity has declined and
2 you set them aside - because nature has been doing this
3 for a long time - we would look at things by then --
4 there would be indicators, like the health of the
5 mycorrhizal connections, there would be things in the
6 soil we could look at, the amount of wood or soil
7 organic material going down into depth in the soil.

8 Those are the things that are really
9 important, and I think there would be indexes that we
10 could develop to tell us when it was rested and it
11 could then be cut again, but we have to ask those
12 questions, and we simply haven't asked them yet.

13 Am I going too fast? I notice I'm
14 speeding up.

15 MS. CRONK: You'll find the reporters
16 have a way of making their sentiments known, Mr. Maser,
17 to people who do that. You're free to continue to
18 inquire, of course, but I suspect you'll know.

19 Q. For the purposes of our discussions,
20 so that I understand the evidence, Mr. Maser, could we
21 talk about these separately then as the native research
22 areas, native forest --

23 A. Natural research areas.

24 Q. Well, when you say natural we get
25 into the definition problem. I thought you told me you

1 were talking about setting aside native forest areas,
2 some of which might be designated as natural, so that
3 the larger category is native forest areas?

4 A. Okay. I finally understand what your
5 confusion is. A natural area can also be a mountain
6 meadow. It's simply a designation, it has nothing to
7 do with what it is protecting at the moment, it isn't
8 necessarily forest.

9 Q. Right.

10 A. It's just the name.

11 Q. Right. When you're talking about
12 research areas for monitoring purposes --

13 A. Okay, let's just call them research
14 areas.

15 Q. Research areas. Those are the native
16 forest set aside areas, some of which may have this
17 restricted use natural area designation, some of which
18 may not?

19 A. Right.

20 Q. All right. So the larger category is
21 the set aside of native forest?

22 A. Right.

23 Q. All right. I was right on that. And
24 then the second is, these areas where the soils are in
25 need of repair and where you would suggest that thought

1 be given to extended rotations; is that correct?

2 A. Mm-hmm.

3 Q. And we'll talk about that. That's
4 extended rotation areas.

5 A. Mm-hmm.

6 Q. All right. Let's talk about the two
7 separately, if we could. Just dealing with the first
8 then, the research areas, if I can put that way.

9 A. Mm-hmm.

10 Q. All right. With respect to those,
11 Mr. Maser, is it, as you propose it or as you envisage
12 it, is it possible in those areas to have some areas
13 where a variety of uses would be permitted from the
14 beginning and other areas within that category where
15 there would be a restrictions on uses for a defined
16 period of time; can you have both?

17 A. Yes, yes.

18 Q. All right. And let's deal with those
19 areas where there is to be restrictions on use, all
20 right?

21 A. Mm-hmm.

22 Q. How would you propose to continue the
23 natural fire regime in those areas?

24 A. That is one of the things that you
25 would have to define when you set it aside. That was

1 why I brought up the struggle we had.

2 For a long time we were unclear and we
3 were afraid of losing them, so we suppressed fire and
4 then we discovered that the understorey was beginning
5 to change and it was going to the next successional
6 stage because it wasn't old growth per se.

7 And so then we decided -- we had to come
8 to grips with, why did we set this aside, and we set it
9 aside to look at the native processes which included
10 fire. So then we had to rewrite the by-laws and the
11 constitution and allow prescribed fire.

12 You folks, if you do something like this,
13 would have the same struggles we did and you would have
14 to make that determination.

15 Q. All right. And you're not making any
16 recommendations one way or the other about that?

17 A. No.

18 Q. All right. But so that the issue is
19 clear, am I correct that the purpose of these research
20 areas and, in particular, those where there is to be
21 restricted use if any, all right, is to ensure that all
22 the natural processes continue to work in the normal
23 course?

24 A. Correct.

25 Q. Including natural fire regimes?

1 A. Correct.

2 Q. So that if you introduce fire
3 suppression you are removing one of the natural
4 processes that the system was designed to study?

5 A. Yes. In fact, you bring up a very,
6 very important point. The ecosystems around the world,
7 not so much in the Tropics, but particularly these up
8 here are designed by catastrophic disturbance: fire,
9 flood, tornadoes, hurricanes, et cetera, including
10 beetle outbreaks.

11 The greatest disruption to those cycles
12 has been our trying to smooth out the disturbances. We
13 have perpetrated the greatest disturbance of all.

14 So part of -- to my view and what we have
15 struggled with is, how do we build these disturbance
16 regimes back into "a natural area", so we can begin to
17 understand the ramifications in terms of management.

18 Q. And based then on the experience in
19 your part of the United States with which you're
20 familiar and your appreciation of the issue, is it then
21 your view that there should not be suppression of fire
22 but that there should be an effort to maintain the
23 natural fire cycle in these areas?

24 A. If you're talking about the natural
25 areas, as I said before, that is what I would do, but

1 that must be your decision, not mine.

2 Q. I understand. All right. And you've
3 said that within the category the writ large of
4 research areas there, you have said, can be restricted
5 use areas and unrestricted use areas; correct?

6 A. Mm-hmm.

7 Q. Would it also --

8 A. Well, unrestricted within limits. I
9 wouldn't -- if you logged it, of course, road it, you
10 have destroyed the purpose you set it aside for.

11 Q. All right. Do I understand though
12 that within that category writ large of research areas
13 there may be areas where harvesting activities, subject
14 to whatever management controls are deemed appropriate,
15 harvesting activities may take place; there may be
16 other areas within the category where that would be
17 prohibited?

18 A. If you did that, you destroy the
19 integrity of the old growth. When you set aside areas
20 of native old growth that would exclude harvest and
21 roading, it would not include native uses, in our
22 country would not necessarily exclude cattle grazing if
23 that had been a historic use.

24 Q. Are we talking in those areas about
25 the prohibition of harvesting and roading or the

1 deferral of it?

2 A. In the areas we set aside, if you set
3 aside areas now to maintain a blueprint of native
4 forest to carry into the future, harvest and roading
5 would be prohibited.

6 Q. Ad infinitum?

7 A. Yes, for that native stand you set
8 aside now, understanding as I said before it will not
9 remain standing indefinitely, it gradually goes to --
10 well, fire may get it or, in our country, the
11 Douglas-fir is a fire subclimax.

12 If we set aside a Douglas-fir stand and
13 we exclude fire and it went to hemlock and cedar, which
14 is the old growth stand and that was not the purpose of
15 the set aside, then it could be cut. At some point it
16 goes beyond that and it is then put into the cut base.

17 Q. All right. So there are
18 circumstances in which although originally part of an
19 area where harvesting was prohibited there can come a
20 point in time--

21 A. Correct.

22 Q. --when harvesting is permitted?

23 A. Correct.

24 Q. So in that sense it's a deferral, not
25 a prohibition. It's a question of when not if?

1 A. Yeah.

2 Q. All right. So consequently --

3 A. For those acres, yes.

4 Q. Yes, I understand.

5 A. Yes, okay.

6 Q. So consequently when you set aside
7 these research areas comprised of various
8 representational successional age, as you've said,
9 there will come a time when the young growth becomes
10 old growth?

11 A. Mm-hmm.

12 Q. And you're not proposing, as I
13 understand it, that the original old growth component
14 of that set aside area should be for ever lost to
15 harvesting, you're not saying that; what you're saying
16 is, you should set it up in a way to ensure that there
17 is always an old growth component, but it may change?

18 A. Let me go to the board for a moment.
19 I still think -- we're trying to say the same thing and
20 I'm not sure we're getting there.

21 Here's a landscape. Now, in this area
22 there has been some management but the decision is made
23 to set aside some of the native old growth forest
24 today, and so let's just pick some areas - we'll pick
25 three - this is old growth, and then you pick - we'll

1 just put in two here because this is small - this is
2 young growth.

3 Now, this old growth, which is the
4 original native old growth, would be set aside until it
5 has fallen apart, it is not to be harvested.

6 Q. Ever?

7 A. Period. Because if you do, then you
8 lose that process oriented wholeness belowground.

9 Now, this will, if it is burned, if it is
10 killed by beetles, if it has served its function and it
11 has fallen apart and become young growth, then it
12 simply goes back into the cut base, whatever that is.

13 Now, in the meantime here's an area that
14 needs some rest and so you defer rotation on this
15 maybe - I'm just going to pick a figure - let's say,
16 250 years. At the end of this rotation the soil is
17 checked to see if it has rested enough and if it has,
18 it goes back and it is then part of the cut base, it is
19 simply an extended rotation.

20 But this is set aside because, I don't
21 like to use this definition, I think I'm going to be --
22 it might help. This is natural, native, what I'm
23 talking about is it is nature's old growth, not
24 humanity's, we did not create this.

25 The whole value of this is that this is a

1 blueprint that will help us learn what we need to
2 create when we have to do it on purpose through
3 management.

4 Q. Right.

5 A. If you truncate this by cutting it
6 you have cut off part of the learning curve and then it
7 would not serve much of a purpose. That's what I'm
8 trying to get at.

9 Q. Just dealing with schematic then that
10 illustrates your proposition, Mr. Maser. Just for sake
11 of illustration you selected -- initially when you
12 create the system, you selected three natural old
13 growth areas, natural in that context meaning not man
14 created.

15 A. Correct.

16 Q. All right. And you've explained that
17 at least one of those, in your view, under the
18 proposition you're putting forward, would never be
19 subject to harvest?

20 A. All of them would not be subject to
21 harvest.

22 Q. Well, that's what I want to come to
23 because the one that you described ultimately gets
24 converted if you will over time at a young growth by
25 natural processes; is that right?

1 A. That would happen with all of these.

2 Q. Let's just deal with the one, we'll
3 come to the other two.

4 A. Okay.

5 Q. The first one that you spoke of is an
6 old growth component that is lost to natural
7 disturbance, fire, disease, whatever?

8 A. Mm-hmm.

9 Q. And ultimately young growth comes in?

10 A. Mm-hmm.

11 Q. And there's a conversion?

12 A. Right.

13 Q. The process continues?

14 A. Correct.

15 Q. And that old growth is for ever lost
16 to harvesting?

17 A. Correct.

18 Q. All right. Now, there were two other
19 old growth components, and what I'm saying to you is
20 this: You also had two young growth components in the
21 schematic?

22 A. Mm-hmm.

23 Q. Over time both of those young growth
24 stands will become old growth barring natural
25 intervention?

1 A. Correct.

2 Q. So you can actually end up with,
3 barring natural intervention, not two remaining old
4 growth components but four. Are you with me?

5 A. Okay, I see where you're heading.

6 Q. Excuse me. Are you with me so far?

7 A. Yeah.

8 Q. All right. And what I'm suggesting
9 to you is in those circumstances surely the kind of set
10 aside procedure that you're recommending should be
11 flexible enough to permit with the emergence of new old
12 growth stands the harvesting of the former ones, the
13 predecessor ones?

14 A. My recommendation -- well, my
15 assumption is by the time these are old growth, these
16 wouldn't -- by the time these young growth become old
17 growth this would no longer be there anyway.

18 Q. Because of natural disturbance?

19 A. Because of natural disturbance.

20 Q. But should that not be the cases...?

21 A. Should it not be the case, then of
22 course you can make the decision whether these are so
23 old they're worth maintaining or you decide you want to
24 cut them. I will not pretend to tell you what to do
25 with that.

1 Q. And the original purpose --

2 A. That is an option.

3 Q. Thank you. And the original purpose,
4 that is maintaining old growth components for the
5 benefit of continuing research into the future, is
6 maintained?

7 A. Depending on how you were defining
8 the benefits. If you want to look at how old growth
9 falls apart, how it changes and you cut it early, you
10 lose that option. It depends in this sense and what
11 you're talking about is what options you want to
12 maintain, and that's entirely up to you.

13 Q. And it also depends entirely; does it
14 not, Mr. Maser, on how many old growth components
15 you've got, how many young growth components, what the
16 purposes are for each: one could be designated for
17 study, decaying over time as you suggest; others can be
18 designated for harvesting in the future when
19 replacement old growth comes on stream; there's any
20 number of variations on the theme that could achieve
21 the same purposes?

22 A. Let me put it this way and see if I
23 can simplify this. What I'm suggesting is that these
24 are set up and if it were up to me I would pick them in
25 time and space where they're most needed, I would

1 protect them until they fell apart and go into young
2 growth; in the meantime, I would also have these
3 available, these would then be converted back into the
4 management, as this area -- let's say this area down
5 here needs rest, I would put that into old growth in a
6 managed sense with the plan of keeping it in the cut
7 base at some later time.

8 And my suggestion is, you can do this any
9 way you want. I would personally not cut or manage
10 these native old growth stand now because you cannot
11 predict what you might need in the future, and my
12 experience has been that once they're cut they're cut;
13 you can always cut them, but once they're cut you
14 cannot get them back in many lifetimes in some cases.

15 Q. In some jurisdictions?

16 A. In some cases like lodgepole pine, 80
17 years will do it, and that is a flexibility that you
18 would have to determine.

19 Q. Right. And where that's the case, it
20 may be that as young growth converts to old growth in
21 that kind of a time frame--

22 A. Correct.

23 Q. --there may be old growth without in
24 any way diminishing the original purpose and intent of
25 the research areas--

1 A. That is correct.

2 Q. --can made subject to harvesting?

3 A. Correct.

4 Q. All right. And you wouldn't rule
5 that option out?

6 A. No.

7 Q. And is that why when you were
8 discussing this with Mr. Lindgren yesterday you said
9 that there will be old growth areas that can come back
10 into the cut cycle?

11 A. That is correct.

12 Q. That you wouldn't remove them from
13 the cut cycle?

14 A. Yes.

15 Q. All right. And that included these
16 set aside native forest areas not just the extended
17 rotation areas?

18 A. I was not including the native set
19 aside, the original native set aside areas in that.

20 Q. All right. But are you now, based on
21 the discussion we've had?

22 A. Yes, if that is something you would
23 want to do. With us, lodgepole pine can be regenerated
24 fairly rapidly, 80 years it's old growth, it might
25 live -- it reaches old growth condition, let's say it

1 lives to 130 years and it's very easy in parts of the
2 country to come by. In those areas where it is not a
3 scarcity, I would say you've got a lot of flexibility
4 than you do in areas where there are some other
5 "natural limiting factor".

6 Q. And if those are the circumstances
7 that apply in northern Ontario in terms of species type
8 and normal rotation ages, that same degree of
9 flexibility could apply?

10 A. Sure, but when you say rotation let's
11 talk about succession not rotation.

12 Q. Successional time periods.

13 A. Correct.

14 Q. Now, again based on the proposal you
15 are making to the Board, in determining how many of
16 these native set aside areas might be appropriate would
17 it be, in your view, appropriate to take into account
18 existing national and provincial park protected areas?

19 A. I would definitely. There is one
20 thing that you might check into with this though and
21 that is what they do with fire. If they suppress fire,
22 then they might not serve the purpose you would like
23 them to serve; if they serve the purpose you would like
24 them to serve, of course, I would build them into the
25 program.

1 Q. In fact, they might serve as ideal
2 monitoring areas; mightn't they?

3 A. For that area, but not across the
4 landscape. For that area of the landscape they may be
5 the best there is, that is correct.

6 Q. Can I ask you to look, Mr. Maser, if
7 you would please, at Exhibit 1674, that is the Policy
8 Statement by the U.S. Forest Service concerning old
9 growth that was introduced yesterday afternoon.

10 A. Okay.

11 Q. Do you have that?

12 A. Yes, Ma'am.

13 Q. Mr. Maser, can you help me first,
14 what proportion of forested landscape in the United
15 States does this policy statement, as you understand
16 it, apply to?

17 A. What proportion? Wherever, on the
18 national forests scattered across the country they're
19 talking about the entire national forest system.

20 Q. All right. Do I take from that that
21 it does apply to state owned forests?

22 A. No, nor private lands.

23 Q. Nor private lands?

24 A. Just public lands, public forest
25 service lands.

1 Q. And do I understand correctly that
2 most of the forested lands in the United States are
3 comprised of either state owned or privately held lands
4 as distinct from national forest lands?

5 A. I would suspect--

6 Q. Or do you know?

7 A. --the best forested lands and
8 probably the most are privately owned, yes.

9 Q. Yes.

10 A. That's my guess.

11 Q. All right. So that this is policy is
12 confined to national forestry managed forest lands in
13 the United States?

14 A. That is correct.

15 Q. Now, dealing with the extended
16 rotation components of the schematic, Mr. Maser, that
17 you drew a few moments ago, would you agree with me
18 that the -- well, first of all, I take it that's
19 another proposition or question that you're raising for
20 consideration by the Board?

21 A. Mm-hmm.

22 Q. Sorry?

23 A. Yes.

24 Q. And that should that proposition find
25 favour, it would -- the length of the extended rotation

1 would fall to be determined based on species type, site
2 condition, scarcity of species, soil circumstances, all
3 of those factors would have to be taken into account?

4 A. I would think so.

5 Q. All right. And they would vary
6 according to the variance of all those factors?

7 A. Including whether it's an elevational
8 gradient, latitudinal gradient, yes.

9 Q. Yes. And when you use the word soils
10 in need of repair, the concept of repair, what
11 specifically do you have in mind in terms of repair
12 need?

13 A. Well, let's say that compaction is a
14 serious problem; in the United States, that can last up
15 to 70 years, or mycorrhizal fungi in the woody
16 component -- let's say for discussion sake that there
17 has been whole-tree harvest on an area for two
18 rotations and there is a deficit of coarse woody
19 debris, part of the biological reinvestment in the
20 soil, and would then be set aside long enough - if that
21 is the index that you're looking at - it would be left
22 to grow long enough to reincorporate enough of that in
23 terms of big wood back into the soil to serve the
24 purpose so it could be cut again.

25 And that is allowing the soil to

1 recapitalize its nutrients and to heal, to regrow, to
2 repair the mycorrhizal connections and to reincorporate
3 the biological reinvestment of woody material and
4 organic material down into the soil profile.

5 Q. Are you talking about situations
6 then, Mr. Maser, where there is evidence that the soil
7 has either been significantly weakened or depleted
8 sufficiently that there's concern as to its long-term
9 future productivity?

10 A. I think when that point comes that we
11 would do this that the people living then would have to
12 make that determination.

13 Q. But is that the concept you have in
14 mind?

15 A. That's a concept, yes. In other
16 words, to me, the concept is to make sure it does not
17 go into shrub field. My assumption is we want to keep
18 it in forested areas, the question is: How do we do
19 this without depleting the soil processes, nutrients or
20 organic material so much that we cross this threshold,
21 as we have done a lot unfortunately, and we have shrub
22 field we cannot get back into forest.

23 So it is much less expensive to society
24 to maintain them above this threshold, and we don't
25 know exactly where that is. So my recommendation is to

1 error on the side of prudence and try to avoid going
2 below that threshold, and when the time comes that that
3 might be necessary, I would hope we would know enough
4 to be able to measure the threshold.

5 Q. And would you agree with me that
6 those professionals charged with managing the land base
7 are those who should make the determination as to
8 whether, first, there should be an extension of
9 rotation to accommodate this problem; and, if so,
10 having regard to all the prevailing site and species
11 circumstances, the appropriate extension period?

12 A. Well, I can't -- I won't make a
13 blanket statement on that because in the United States
14 the public has a very large say in how that is done.

15 Q. Sorry, I didn't mean to exclude the
16 public. What I meant was, persons who are actually
17 familiar with and working that land base?

18 A. Yes, and that could be people from
19 universities.

20 Q. Sure.

21 A. Yes.

22 Q. And would you agree with me as well
23 in making that determination and taking into account
24 all those variables, the decision to embark on a
25 designated extended rotation area could only be made

1 when a study had been conducted to determine, first of
2 all, whether the site required it, that it was a soil
3 repair need or necessity, you have to look at that to
4 see if there was problems?

5 A. I wouldn't say it could only be
6 initiated then, I would say that's when I would do it.

7 Q. Of course. What I'm suggesting to
8 you is --

9 A. It would not be an arbitrary thing.

10 Q. Precisely. You would have to go in
11 and conduct a study with respect to any area that was
12 suggested as a potential candidate for an extended
13 rotation arrangement to determine what the soil
14 conditions were, what the needs of the area were, and
15 how they could best be accommodated?

16 A. That's what I would recommend, but I
17 think there's something here we have to take into
18 account too. I would recommend that on the assumption
19 that the future wants the same products off those acres
20 that we want today; if they want something else, that
21 might be a moot point, but based on -- going on the
22 assumption that what we see is value in the forest
23 today the future is going to see the same values then,
24 yes, it would have to be evaluated.

25 Q. What I'm suggesting is it's

1 site-specific within any given landscape?

2 A. Yes.

3 Q. You have to actually look at what was
4 there?

5 A. Yes. I would not guess with that.

6 Q. Precisely. And then generally with
7 respect to these set aside areas of native forest, as I
8 understood what you were suggesting to the Board, you
9 were in effect suggesting as - what I'm coming to is
10 implementation, how one goes about this given the
11 concept that you've raised - and as I understood what
12 you were suggesting to the Board, to put it in the
13 vernacular, you were suggesting a think tank, you said
14 we should find the best people we could, put them
15 together, charge them with the responsibility to go
16 away and think about this and come up with a management
17 plan.

18 That was the proposition you made to Mr.
19 Lindgren yesterday?

20 A. Not quite that simplistically. There
21 is a lot of data out there that could be gathered,
22 collated and sythesized and what I'm recommending is
23 that you get all the data or evidence that is
24 available, put it together in the most meaningful
25 package, and then you know what you think you know, you

1 know what you know you don't know, and you can make
2 whatever decisions you make based on the best there is.

3 Q. And acting on the supposition that
4 the best information available is compiled in the way
5 that you suggest available for analysis and study,
6 would you agree with me that that has to be done before
7 a determination can even be made as to whether this
8 reserve concept is an appropriate and timely one for
9 northern Ontario at this time?

10 A. What I was getting at with having the
11 people get together was not just to gather the data,
12 but to sit down and synthesize what is there, make it
13 into a story line in essence, so that it is coherent
14 and set up the preserve area, whatever you want to call
15 it, and then you have something to consider.

16 Q. I wasn't directing my attention and
17 perhaps I put the question awkwardly, Mr. Maser, as to
18 who would actually do this or how it might be carried
19 out.

20 What I'm suggesting to you is this:
21 You've raised this as a question for this Board to
22 consider, you've explained why, you've outlined to them
23 how you would approach it; correct so far?

24 A. Mm-hmm.

25 Q. And what I'm suggesting to you is

1 before the question can be answered that it is or is
2 not a desirable thing, there's a lot of information
3 that has to be compiled, the best information that's
4 available, as you say, to determine whether it is
5 something that should or should not be pursued at this
6 time and, if so, in what direction?

7 A. I think regardless it would be a
8 desirable thing. The question is not whether or not
9 it's desirable, the question is whether or not you
10 choose to do it and that is totally your choice.

11 Q. Yes.

12 A. I think maintaining some of nature's
13 blueprint is always wise and desirable, whether or not
14 we choose to do it for whatever reason is a different
15 question.

16 Q. And whether it should be done and the
17 timing of whether it should be done are decisions that
18 will have to be made in this jurisdiction based on the
19 best information available.

20 A. That I would assume.

21 Q. All right. And what I'm suggesting
22 to you and the Board has your view, your evidence, that
23 you would consider this a wise thing to do; that's
24 where we got started on this.

25 A. And that's all it is.

1 Q. All right. That's a wise thing to
2 do. What I'm suggesting to you is that all of that has
3 to be put together in order for a determination to be
4 made as to whether that's a relevant question now in
5 Ontario; you've got to find out how much there is,
6 where it is, what need there is for it, how it might be
7 done, and all of that has to be looked at before you
8 can say, yes, this is relevant now here?

9 A. No, I'm afraid I would not agree with
10 that. I think it is relevant now here because once
11 whatever's gone from whatever acre is gone, that's the
12 point I'm getting at.

13 Whether or not you choose to act on the
14 relevance of that is a different question.

15 Q. And that's your view repeat? That's
16 your view, that it's relevant here and now?

17 A. That's what I'm saying.

18 Q. All right.

19 A. It is relevant everywhere in the
20 world today because of the speed with which we are
21 losing habitats. That is my view. It relevant,
22 period.

23 There is a whole new -- there's a whole
24 new professional society that has come in dealing with
25 the loss of biodiversity and habitats, it's called the

1 Society for Conservation Biology, and what their main
2 focus is is maintaining a good representation of
3 habitats world wide.

4 So the issue to me is relevant world
5 wide, whether or not you see it as relevant or choose
6 to act on it, that is a different question, and that I
7 have nothing to say about.

8 Q. What I'm suggesting to you, sir,
9 apropos of our discussion earlier this morning, that in
10 this jurisdiction in order to determine that this is
11 relevant to do now, one must first ask a series of
12 sub-questions and get the answers, and the questions
13 are: How much is there? How much old growth do we
14 have today? Is there a reason to be concerned about
15 its conservation today? Where is it? How should we go
16 about embarking on a reserve or set aside proposal of
17 the kind you've outlined?

18 Those are all questions in this
19 jurisdiction that have to be looked at before you can
20 say, yes, this should or should not be done and when it
21 should be done; does that make sense?

22 A. It makes sense, but I don't agree
23 with the premises that you have to have all that data
24 before you determine the relevance. What I'm
25 suggesting is, at the speed with which habitats are

1 disappearing, I would categorically say it is relevant.

2 Q. I see.

3 A. Now, whether you choose to act on it,
4 that is something else; how you choose to act on it,
5 that is something else.

6 Q. What I was thinking - perhaps we were
7 looking at it in different contexts - what I was
8 suggesting was that if a needs analysis were to be
9 done, all right, a need analysis, pieces of information
10 that would be necessary for that analysis would
11 include: What is the situation in terms of old growth
12 stock? How much do we have? Are we in a surplus or a
13 deficit position? Where is it? Is there a need for
14 the kind of set aside reserve or proposal that you're
15 making?

16 Those are questions that would have to be
17 looked at. We'd have to do a needs analysis.

18 A. What I'm suggesting is the need
19 exists world wide including in Ontario, period, because
20 of the disappearance of habitats, and I say that for
21 specific reason.

22 Where we have not planned to have areas
23 built into a program, they have been logged one way or
24 another, grazed one way or another because there was no
25 conscious evidence in the thought process in the

1 planning to deal with a balanced mix of maintaining
2 areas for insurance purposes for a blueprint, whatever
3 you want to call them, and those to be managed.

4 So I would say categorically the need
5 exists in my opinion on a world wide basis to save a
6 representative of habitats wherever they are, whatever
7 the circumstances, based on world history and where
8 we're heading today, and if global warming is a
9 reality, which I assume it is.

10 Now, whether or not you choose to act on
11 that is something else.

12 Q. All right. Mr. Maser, I'm not
13 quarreling then or now with the suggestion of what is
14 or is not needed on a global scale, that's not the
15 subject --

16 A. Well, I'm including Ontario.

17 Q. I understand.

18 A. Okay.

19 Q. That's not the subject of this
20 hearing and it's not for me to judge, all right. What
21 I am suggesting to you is this: Is that not knowing,
22 as you have candidly agreed you do not, what the
23 circumstances are in northern Ontario in terms of the
24 current amount of old growth or how much has been cut
25 or where it is or what our species are, it is not

1 reasonable to then say to this Board: I can say
2 categorically that the need exists in northern Ontario
3 for this kind of proposal because I know it exists
4 world wide.

5 And what I'm saying to you, sir, as a
6 scientist is that you believe it is relevant in
7 ecological terms and it's an issue clearly to be
8 addressed by this Board. On that we can agree so far?

9 A. Mm-hmm.

10 Q. All right. You have to say yes or no
11 for the reporter?

12 A. I'm sorry, yes.

13 Q. All right, yes. What I'm suggesting
14 to you is that you cannot then make the leap, you
15 cannot, on the basis of your knowledge base to say it
16 is needed now in Ontario without knowing what the
17 Ontario experience is?

18 A. Yes, I can.

19 Q. All right.

20 A. I can because I do not believe in
21 political boundaries when it comes to looking at
22 habitats on a balanced mix around the world. I cannot
23 ecologically separate one tiny area, which to me is a
24 tiny area, and say this one is a special case.
25 Ecologically that makes no sense.

1 Q. Well, let me ask you this, Mr. Maser:
2 If the evidence before this Board from other witnesses
3 who are experts in the northern Ontario experience is
4 that the old growth stock is at present in a surplus
5 position in northern Ontario, if that is the evidence -
6 I ask you to accept that from me for the moment - I
7 take it you have no information base based on personal
8 knowledge with which to disagree with that one way or
9 the other?

10 A. I would question the term surplus.
11 See, depending on how you define that. I am not
12 quarreling with the fact that you would like to
13 determine that within a particular jurisdiction; I am
14 not quarreling with that you have other people that you
15 think of as experts that say this, that or the other
16 thing, that's totally non-germane to what I'm trying to
17 get across.

18 What I'm trying to get across is on a
19 world wide basis, including all nations, all acres, we
20 are losing habitats at an exponential rate.

21 You may have so much old growth that you
22 could set up the world's best reserve system where the
23 rest of us have piddley little pieces because we waited
24 too long. The need is there irrespective of
25 jurisdiction. The need is now.

1 Now, whether or not you choose to act on
2 that, whether or not you choose to recognize that,
3 whether or not you see it differently, does not erase
4 the fact that the world is losing habitat at an
5 exponential rate, and if it is not planned now it will
6 likely not be there in the future, maybe not on the
7 acres where it is most needed. That is all I'm trying
8 to say.

9 Q. Can we go this far together, Mr.
10 Maser, would you acknowledge that some people might
11 have difficulty with the proposition that if there is
12 no shortage of old growth in Ontario we should create
13 reservoirs of it here for needs continents away? Some
14 people might have great difficulty with that
15 proposition?

16 A. I have no problem with that.

17 Q. You don't, but some people might?

18 A. I have no problem with them having
19 problems with it.

20 Q. Yes, exactly. What I am suggesting
21 to you, sir - the question I put to you was - if there
22 is evidence from knowledgeable witnesses before this
23 Board that there is currently no shortage of old growth
24 in northern Ontario - if that is the evidence - am I
25 correct that you do not have any basis in an

1 informational or direct knowledge sense to disagree
2 with that?

3 A. No.

4 Q. Because you don't know?

5 A. No, we're still at cross wires here,
6 I think.

7 Q. Am I right so far, though?

8 A. No, because I will still say
9 categorically across the board we need to set aside
10 habitats now around the world. If someone else decides
11 that there is a surplus and decides that it is not
12 necessary, that is their purview, that does not alter
13 the way I see the world based on my experience.

14 MADAM CHAIR: Mr. Maser, your evidence is
15 that it's wise for countries to set as a precaution, to
16 set aside reserve areas regardless of how much old
17 growth might exist?

18 THE WITNESS: That's all I'm trying to
19 say, and beyond that I have nothing to say.

20 MS. CRONK: Thank you, Madam Chair.

21 Q. One final question on that point
22 then. Mr. Maser, if there are currently in northern
23 Ontario areas that have been set aside, park areas,
24 seed collection areas, areas of that kind, all right,
25 is it your evidence because of the global situation

1 today as you apprehend it that you can say
2 categorically, in the absence of an informational base
3 with respect to northern Ontario, that there should be
4 further set aside areas, or are you saying look at it?

5 A. I'm saying I would evaluate it. I am
6 not saying you should set them aside, I am not saying
7 how much, where, or anything. I am saying that from
8 all of the -- all I have seen and all of the evidence
9 we have on the loss of habitat and current ecological
10 thinking, I would suggest that, and that's all I'm
11 saying.

12 And I'm saying the need is there; now,
13 what you do with that - in my opinion the need is
14 there - is totally open.

15 Q. Okay. When you say the need is
16 there, you mean that in a global sense?

17 A. That is correct.

18 Q. One of the areas, Mr. Maser, in which
19 Mr. Lindgren qualified you as a witness to give
20 evidence before the Board was in the area of forest
21 management, do you recall, and I have some questions
22 for you concerning your concept of appropriate forest
23 management.

24 I understood you to say to the Board in
25 the course of one of the answers that you gave Mr.

1 Lindgren yesterday or the day before that you were
2 concerned about blanket or rigid rules being set down
3 for the management of forests.

4 A. Mm-hmm.

5 Q. Do I understand that correctly?

6 A. You do.

7 Q. And you gave as an example, as I
8 recall it, a law in the United States, the dumb law -
9 you called it a dumb law - a law which required
10 reforestation within five years of harvest?

11 A. Mm-hmm.

12 Q. That was an example?

13 A. On all acres across the board, that
14 is correct.

15 Q. That was an example you gave?

16 A. Yes.

17 Q. And that is the law you called dumb?

18 A. Right.

19 Q. And you said that because there might
20 be circumstances in which that was unwise, it was
21 unwise to reforest within five years?

22 A. No, Ma'am. I said that because there
23 are many circumstances in which it is biologically
24 impossible, and so we lie to ourselves, we say we can
25 do it, we cut it, and we know better and it's building

1 in a cheat sheet into management, which I think
2 degrades management.

3 I also think managers are intelligent
4 enough and professional enough to know the difference;
5 given the opportunity to be ethical, they will choose
6 that, and I do not think they should be restricted from
7 cutting acres which might take 20 years to reforest if
8 that is part of the normal cycle.

9 We have set an arbitrary limit on
10 something nature has not evolved with; that to me is
11 never wise. I think we need to adapt to the system and
12 if it takes 20 acres to manage deer, in 20 years you
13 can manage deer there. If that is what it takes to get
14 that site ready for the next stand, that's a decision.

15 But to make a law to try to force the
16 system to do something, to me does not make any sense.

17 Q. And would it then also be your view,
18 if it did not have the status of a law, are you keying
19 on the concept of a law, or would the same be true of a
20 directive or regulation or policy or requirement.
21 You're just saying, let's not have rigid pre-determined
22 thinking?

23 A. What I'm saying is rigid
24 pre-determined thinking, I have never seen be
25 productive and I've often seen it be destructive.

1 Q. Whatever form that might be?

2 A. Whatever form that might be.

3 Q. It would be uninappropriate for
4 forest management?

5 A. I don't know if it would be
6 inappropriate, I think it's unwise and untenable.

7 Q. Do I understand then from what you
8 just said to me -- let me put it another way. Would it
9 be fair then for me to suggest to you that it would be
10 appropriate, given your views on this matter, that from
11 a management approach trained professionals charged
12 with the responsibility of forest management be
13 permitted flexibility in their decision-making?

14 A. I would qualify that and say, if it
15 is on public lands that the public should be totally
16 involved in that decision because of changing social
17 values; if it is on private land, that is a different
18 question.

19 Q. All right. Let's deal with public
20 lands.

21 A. Pardon me?

22 Q. Let's deal with public lands.

23 A. With public lands, I would suggest
24 that the public would be involved in the entire process
25 and that the managers, because they are public lands,

1 the managers do not own the land, the public does, and
2 they have a say in how it is managed.

3 That is where we need to negotiate the
4 outcome, which is the process that we have finally
5 established in the States. So the public as the owners
6 direct the managers of what values they see out there,
7 the managers are every bit intelligent enough and well
8 trained enough to be able to carry out that jointly
9 arrived at directive.

10 Q. Do you regard it as important in
11 forest management, Mr. Maser, for professionals
12 involved in forest management to rely on their past
13 experience, for example?

14 A. I think we all rely on past
15 experience.

16 Q. Do you think it -- the answer then is
17 yes?

18 A. Well, if it isn't yes I don't see how
19 we can do anything else.

20 Q. It's inevitable, is what you're
21 saying?

22 A. Yes.

23 Q. Do you think it important that they
24 learn from the experience of others and, as well, make
25 use of their professional judgment?

1 A. Yes.

2 Q. All right. And so long as there is
3 informed -- so long as the opportunity for informed
4 consultation with the public is created in the process,
5 so long as that is assured in the process, is it your
6 view in forest management that professionals can be
7 relied upon to exercise their judgment professionally?

8 That's in essence what I thought you were
9 saying a few moments ago?

10 A. What I'm saying is -- let me back up
11 here for a moment. I have never met a human being in
12 my life yet who has intentionally set out to harm an
13 acre of ground.

14 I have met people that are called
15 professionals with degrees that have different levels
16 of consciousness of the consequences of their actions
17 and may do damage and may not, that does not make the
18 person bad, it means that the action may be socially
19 unacceptable.

20 What I'm saying is that the public, on
21 public lands, needs to be part of the process
22 determining what is wanted from those acres. At that
23 point I would trust the professionals to produce and
24 carry out the public mandate, not to say: We have
25 heard you and now we will make the decision what needs

1 to be done.

2 Q. Once the public mandate is received
3 consequent upon public involvement and participation,
4 do you agree that in the best interests of the forest,
5 forestry professionals should be afforded some
6 flexibility in how they effect that mandate?

7 A. I agree, subject to review by the
8 public.

9 Q. All right. Would you also agree --

10 MR. MARTEL: Can I ask a question then?

11 MS. CRONK: Yes, sir.

12 MR. MARTEL: Maybe we're getting hung up
13 on the word consultation.

14 THE WITNESS: I'm sorry, I didn't get
15 that.

16 MR. MARTEL: I said maybe we're getting
17 hung up on the word consultation. You're not thinking
18 of someone simply inviting someone in for a chat?

19 THE WITNESS: No.

20 MR. MARTEL: And then going away and
21 drafting a plan?

22 THE WITNESS: No.

23 MR. MARTEL: You're thinking of something
24 much more complex?

25 THE WITNESS: That's right.

1 MR. MARTEL: Much more involved?

2 THE WITNESS: What we have and what we
3 have finally arrived at is, the various groups,
4 interest groups have representatives that sit down with
5 the Forest Service and actually go through, as part of
6 the planning team, to determine what is done on those
7 acres and then they have the opportunity to critique
8 the performance on public lands. That's what I'm
9 talking about.

10 MS. CRONK: And what I'm - I'm sorry,
11 sir, were you finished?

12 MR. MARTEL: No, that's fine.

13 THE WITNESS: Did I answer your question?

14 MR. MARTEL: Yes, you did. Thank you.

15 MS. CRONK: Q. And what I am suggesting,
16 Mr. Maser, is that once that is done, once the
17 objectives are defined, a mandate received following a
18 process of one form or another of that kind--

19 A. Mm-hmm.

20 Q. --that proper forest management
21 requires that professionals be given some flexibility
22 in carrying out their jobs?

23 A. That is correct.

24 Q. And would you agree with me that it
25 is equally important for proper forest management that

1 the professionals charged with the responsibility of
2 carrying out those tasks of managing the lands have
3 available to them all the state-of-the-art tools that
4 can be afforded to them by science, it's important that
5 they have as much state-of-the-art scientific tools
6 available to them as possible?

7 A. I would say a qualified yes. I would
8 make sure. There are some tools, for example - let me
9 back up for a moment - that may no longer be deemed
10 appropriate based in one area, they may be appropriate
11 in another based on ecological consequences, and from
12 past experience or from new data at that point I would
13 delete those from the kit bag of tools.

14 What I would say that they should have is
15 as much flexibility as possible in a way that does not,
16 so far as we know, alter the ability of the land to
17 produce, yes.

18 Q. Well, would you agree with me as well
19 that before any deletion from - what did you say - the
20 tool bag?

21 A. The tool bag, yes, Ma'am.

22 Q. Before any deletion from the tool bag
23 occurs that one should be -- given the best interests
24 of the forest, that we should be very careful to ensure
25 that careful examination is made before any deletion

1 from that tool bag is made?

2 A. I would recommend that, but I would
3 also make an observation here. We have had these
4 hassles in the United States and while the -- with
5 clearcutting for example, and while that determination
6 was going on, industry was cutting like crazy to get as
7 much out before there might be any restriction, and to
8 me that simply does not deal with the spirit of the
9 human relationships.

10 I think in the future we really need to
11 negotiate an agreement, a human being to human being
12 agreement about dignity and decide what the goals and
13 objectives of that land area are and if, for example -
14 and I will go back to my discussion of clearcutting -
15 I would not condone on the east coast no clearcutting,
16 because I am not convinced it is necessarily -- the
17 tool is neither good nor bad, it's how it's used, and I
18 came to understand that the public's objection to it
19 over much of the United States was the arrogance with
20 which it was used.

21 Now, they are trying to do away with
22 clearcutting and they may very well do that. I'm not
23 convinced it's necessary. If the industry had acted
24 differently, if their behaviour had been different, we
25 might not have that confrontation today.

1 What I'm suggesting is, I would like to
2 all the tools possible, all the flexibility possible,
3 but that is going to depend on how we treat one
4 another.

5 Q. And what I'm suggesting to you, Mr.
6 Maser, I don't think is much different from that; and,
7 that is, is that there should be no scientific
8 state-of-the-art tool removed from the potential use of
9 the professionals in the field in forestry unless it's
10 carefully examined to determine that that removal is
11 necessary, is all I am saying.

12 A. I think I understand where you're
13 coming from. Let me try making a distinction here. I
14 think what you're using is technological tool, science
15 is not a tool, it's a process.

16 What is used in management is not
17 science, it's the art of using things we have created
18 such as tractors, chain saws and so forth and
19 chemicals. That is a state of technology, that's not a
20 state of science.

21 The science is the understanding. If the
22 scientific understanding is that, whatever tool it is
23 is compatible with what you're trying to do, by all
24 means use it.

25 Q. All right. You use the example of

1 clearcutting.

2 A. Right.

3 Q. Let's use that.

4 A. Exactly.

5 Q. What I'm saying to you is, is that -
6 and I think you have said - that there is nothing
7 inherent to the practice of clearcutting that would
8 warrant its deletion as a tool available to
9 professional foresters?

10 A. That is my opinion.

11 Q. Right. And it depends how it's used
12 and in what circumstances?

13 A. That is correct.

14 Q. That would be equally true of any
15 other tool available to a professional forest manager;
16 would you agree?

17 A. That is correct.

18 Q. And whether the tool is a form of
19 methodology, a form of harvesting system, which is what
20 clearcutting is--

21 A. Right.

22 Q. --or whether it's a form of tractor
23 or any other technique or technology--

24 A. Correct.

25 Q. --in principle, the same is equally

1 true; you agree?

2 A. Correct.

3 Q. All right.

4 A. If it can be shown to serve the
5 purpose and not damage the system's ability to
6 function, by all means.

7 Q. And what I'm suggesting to you and
8 I'm asking whether you agree with this, is that before
9 removal of that kind of a tool or technique from any
10 professional forester, it has to be very -- writ large,
11 professional forester writ large - it has to be
12 examined very carefully to determine whether there is
13 the need to remove it because of adverse impact,
14 ecological concerns, whatever. You can't assume it,
15 you've got to make sure?

16 A. You can assume it, and I wouldn't
17 recommend assuming it, but I also wouldn't recommend
18 assuming that a new tool is necessarily good and better
19 without the same scrutiny.

20 Q. I agree.

21 A. Okay.

22 Q. Now, there was another aspect of what
23 you said about management that was of interest to my
24 clients, Mr. Maser. I understood you to tell Mr.
25 Lindgren, or perhaps it was to a member of the Board in

1 response to a question, that when it came to plantation
2 management, insofar as you were concerned, management
3 decisions were made in the boardroom; do you recall
4 giving that evidence?

5 A. Yes.

6 Q. All right. Now, you have at various
7 times during the course of your evidence referred to
8 the industry.

9 A. Mm-hmm.

10 Q. You have rarely referred to, as I
11 recall your evidence, the government in your
12 jurisdiction, but may I be clear first about this, that
13 when you talk about the industry or industrial in the
14 course of your evidence, you are talking about the
15 industry or commercial concerns in the Pacific
16 northwest from which you come?

17 A. I am talking about from what I have
18 seen timber industry, understanding - and this is a
19 term I hate frankly, because I'm really talking about
20 people - I use the term industry to talk about that
21 part of management that goes from the forest to the
22 mill which has a certain historical record around the
23 world, including in Canada, and has a certain way of
24 looking at the forest, which I am not judging, it's
25 neither good nor bad, right nor wrong.

1 Q. Well, forgive me, but a few moments
2 ago you very much judged the attitude of industry in a
3 particular respect.

4 A. How?

5 Q. And you described the attitude
6 towards clearcutting by the industry in your
7 jurisdiction, I thought, as being arrogant. I don't
8 want to have a debate over that.

9 A. In the past.

10 Q. What I'm asking you, sir, is when you
11 made comments of that kind, were you talking about the
12 industry in the part of the world from which you come,
13 that is the Pacific northwest? I assume you were not
14 talking about the industry in Ontario?

15 A. No.

16 Q. Of which you know nothing.

17 A. No. I can understand what you're
18 saying, no that is correct.

19 Q. Is that correct?

20 A. Yes.

21 Q. And when you suggested that
22 plantation management decisions are made in the
23 boardroom, again, I take it you were referring to the
24 boardrooms with which you are familiar, the Pacific
25 northwest because, again I suggest to you with respect,

1 you do not know how management decisions are made in
2 this jurisdiction, or where they're made?

3 A. That is true. I'm glad you clarified
4 that, thank you.

5 Q. And in fairness I say that to you
6 because of course you don't know what's done in an
7 operational context in northern Ontario by industry or
8 government?

9 A. That is the one thing in the way we
10 end up having to deal with each other that always
11 bothers me, we talk about the Forest Service, the
12 government, the industry.

13 Q. And I'm suggesting one should be very
14 cautious.

15 A. Well, I'm suggesting that I don't
16 even like those terms because we're really talking
17 about people.

18 Q. All right. And my question - I am
19 not sure I had an answer - was that in fairness to you
20 the reason I put those propositions to you is because
21 you don't know what the operational practices are--

22 A. That is correct.

23 Q. --in either a planning or a
24 management or a field sense in this jurisdiction?

25 A. That is correct.

1 Q. And that's true whether it be
2 industry or government?

3 A. That is correct.

4 Q. Thank you. Mr. Maser, could I ask
5 you to go back to your witness statement please,
6 Exhibit 1665.

7 A. Mm-hmm. Which page?

8 Q. Well, let's just talk about it
9 generally for a moment, if we could. Would I be
10 correct in suggesting, in general terms, that much of
11 this witness statement, if not in conceptual terms its
12 entirety, is a distillation of principles and concepts
13 articulated by you and expanded upon in your book The
14 Redesigned Forest.

15 A. Some of them, some of them I have
16 formulated since that was published; none of them - I
17 would like to clarify, because I noticed in two of the
18 questions it came across as though -- it was taken as
19 what I said is something personal about Ontario - none
20 of this has anything to do specifically with Ontario.

21 Q. Well, that may help me shorten my
22 questions considerably. Let me be clear about a couple
23 of things.

24 A. Okay.

25 Q. First of all, am I correct in

1 suggesting that in very large part, not all of it, but
2 in very large part of the concept and principles
3 advanced in your witness statement do derive from your
4 text The Redesigned Forest, I don't say word for word
5 every page but, in large part, that's the case?

6 A. Yes.

7 Q. All right. And they also derive; do
8 they not, from an article written by you and published
9 in July of 1990 in a publication entitled Natural Areas
10 Journal, the article was entitled: On the Naturalness
11 of Natural Areas, Perspective for the Future.

12 A. Mm-hmm.

13 Q. Is that correct?

14 A. Mm-hmm.

15 Q. All right.

16 A. But these are also based on -- in the
17 book, a lot of it on the research that we have done
18 over the last 15 years.

19 Q. I understand. It's a progressive
20 thing.

21 A. Right.

22 Q. Mr. Maser, do you have available to
23 you a copy of that article, sir, from the Natural Areas
24 Journal?

25 A. No, I don't.

1 Q. Or would you like another one.

2 MS. CRONK: Madam Chair, I would ask that
3 this be the next exhibit. (handed)

4 MADAM CHAIR: Thank you. This will be
5 Exhibit 1679.

6 MR. LINDGREN: Madam Chair, for the
7 record I would point out that this has been reproduced
8 in document III of the FFT source book for witness
9 statement No. 6.

10 MS. CRONK: Thank you, Mr. Lindgren.

11 MADAM CHAIR: Do you want a separate
12 exhibit number in that case?

13 MS. CRONK: Yes please, if you don't
14 mind. Madam Chair.

15 MADAM CHAIR: And how many pages is this
16 article, six?

17 MS. CRONK: Seven.

18 ---EXHIBIT NO. 1679: Seven-page article entitled: On
19 the Naturalness of Natural Areas,
20 Perspective for the Future
published in the Natural Areas
Journal, July, 1990 by C. Maser.

21 MS. CRONK: I'm sorry, Madam Chair, I
22 missed the exhibit number.

23 MADAM CHAIR: 1679.

24 MS. CRONK: Q. Mr. Maser, am I correct
25 that this is an article that was published, as I

1 suggested a moment ago, in a publication entitled The
2 Natural Areas Journal in July of 1990, Volume 10, No.
3 3, and it was written by you?

4 A. Correct.

5 Q. All right. And the contents of your
6 witness statement in these proceedings derive from the
7 contents of your book The Redesigned Forest--

8 A. Mm-hmm.

9 Q. --together with this article. Those
10 two documents, that is the book and the article in turn
11 being, deriving from research work you had previously
12 undertaken?

13 A. And in part from another paper which
14 is in press, at least the ideas.

15 Q. What is that paper?

16 A. I can't tell you offhand. It's not
17 going to be out until some time later this year. I
18 beg, borrow and steal from everything I have done, so I
19 can't pin one thing down. Basically the ideas are
20 incorporated from these things, yes.

21 Q. Do you have a copy of your in press
22 article here?

23 A. No, I don't

24 Q. You don't.

25 A. I didn't even think to bring it.

1 Q. Are you saying you had regard to it
2 when you were writing the witness statement--

3 A. Up here.

4 Q. --or simply referred -- in your head?

5 A. Yeah. I don't think it was -- I
6 don't think it was cited.

7 MR. LINDGREN: If I can just clarify, Mr.
8 Maser, are you referring to your article entitled:
9 Authenticity in the Forestry Profession?

10 THE WITNESS: No.

11 MS. CRONK: Q. With respect to the book
12 The Redesigned Forest, Mr. Maser --

13 MS. CRONK: Madam Chair, may I just
14 clarify something. Have two copies been provided to
15 the Board or one only? One.

16 Q. That as you know, Mr. Maser, is
17 Exhibit 1670 before the Board. Am I right that the
18 manuscript for the book was prepared -- sorry.

19 MADAM CHAIR: Go ahead, Ms. Cronk.

20 MS. CRONK: Q. The manuscript was
21 prepared in I'm assuming 1987 or 1988?

22 A. No, it was published in 1988.

23 Q. In the United States?

24 A. Yes.

25 Q. Published in 1988 in the United

1 states?

2 A. Right.

3 Q. In 1990 in Canada?

4 A. Right.

5 Q. And the preparation of the manuscript

6 obviously was preceding 1988 and several years before

7 that, or the year before?

8 A. No, not several years. It was

9 done -- I think I finished it in 1987.

10 Q. Okay, thank you. And did I

11 understand you to say a few moments ago that none of

12 the concepts or principles advanced in your witness

13 statement are in any way designed - I don't know which

14 word to use, please help me - none of them are

15 particular to northern Ontario or the forestry

16 situation in this jurisdiction?

17 A. None of them are particular to

18 Ontario, period.

19 MS. CRONK: Madam Chair, I have quite a

20 few questions in this area. Do you wish to rise now?

21 MADAM CHAIR: It's lunch time, Mr. Maser.

22 THE WITNESS: Thank you, Ma'am.

23 MADAM CHAIR: The Board will be back in

24 an hour and a half.

25 THE WITNESS: Okay.

1 ---Luncheon recess at 12:00 p.m.

2 ---On resuming at 1:30 p.m.

3 MADAM CHAIR: Please be seated.

4 MS. CRONK: Madam Chair, in light of the
5 evidence given by the witness this morning, I consulted
6 with my clients over the noon hour and also reviewed
7 the balance of items that I had intended to address in
8 cross-examination and I wish to request clarification
9 from Mr. Lindgren, if he's in a position to provide
10 it - and he may not be, and if he is not, that makes
11 the decision very easy for me - but if he's in a
12 position to assist, I would be grateful.

13 And the request is this: In light of the
14 evidence that the witness has himself given this
15 morning as to the particularity of his witness
16 statement and the evidence he's given to the Ontario
17 situation, I wonder if Mr. Lindgren can clarify for my
18 assistance and that of other counsel whether it is
19 Forests for Tomorrow's position that his evidence is
20 relevant to the Ontario forestry experience, or is to
21 be in Forests for Tomorrow's view extrapolated to the
22 Ontario forestry situation?

23 That arises directly, as the Board may
24 appreciate, in light of the evidence that the witness
25 gave this morning.

1 And if the answer to that is no, my
2 cross-examination will be materially shortened, I will
3 have very few questions; if the answer is different,
4 then I will be a considerable length of time.

5 MR. LINDGREN: If the question, Madam
6 Chair, is whether or not FFT believes that Mr. Maser's
7 evidence is relevant to Ontario or it can be
8 extrapolated to Ontario, then the answer is clearly
9 yes, we would not have requested Mr. Maser to attend
10 before the Board if we thought otherwise.

11 So I think that provides the answer to my
12 friend and provides her with the direction for her
13 cross-examination.

14 MS. CRONK: Thank you. Thank you, Mr.
15 Lindgren.

16 Q. All right, Mr. Maser. Just a few
17 follow-up items then, if I may, from this morning.

18 A. Okay.

19 Q. We were discussing at some length,
20 you will recall, the schematic that you placed before
21 the Board and I neglected to request that it be marked
22 as an exhibit. I take it you would have no objection
23 to that?

24 A. No. If you can make sense out of it,
25 that's fine.

1 MS. CRONK: I wonder, Madam Chair, if
2 that could be the next exhibit, please.

3 MADAM CHAIR: That will be Exhibit 1680.
4 What would you like to call this fine work of art, Mr.
5 Maser?

6 THE WITNESS: Let's say --

7 MR. MARTEL: Not a Rembrandt.

8 THE WITNESS: God, no.

9 MS. CRONK: Closer to Picasso.

10 THE WITNESS: Let's just call it old
11 growth in the landscape.

12 MADAM CHAIR: That will be Exhibit 1680.

13 ---EXHIBIT NO. 1680: Hand-drawn schematic of old
14 growth in the landscape by C.
Maser.

15 MS. CRONK: Thank you, Madam Chair.

16 Q. Mr. Maser, we spoke this morning and
17 I asked you, and you were good enough to give me your
18 view, regarding how the natural fire regime might or
19 might not be continued or permitted to occur in areas
20 set aside for the purposes described this morning
21 should that occur.

22 Are we agreed that the natural fire
23 regime in Ontario, or in any other jurisdiction, is
24 very much a part of the natural ecological process?

25 A. Very much, we are agreed.

1 Q. Does it follow from that that it is
2 an unnatural process to suppress fire and set aside
3 areas of the kinds we were discussing this morning?

4 A. It is unnatural in the sense that you
5 are altering the system. If you wish to alter the
6 system and keep the area for some other reason, that is
7 a choice, but it gets away from the naturalness as we
8 were discussing it this morning.

9 Q. Would it not in fact represent the
10 type of foreign process that you described to the Board
11 in your evidence as being sometimes introduced to the
12 otherwise natural ecosystem processes?

13 A. That is correct.

14 Q. Would you agree with me that it would
15 be extremely difficult in an operational sense to stop
16 fire propagation if it occurred naturally in set aside
17 areas of the kinds we discussed this morning?

18 A. Well, if -- you're saying if a fire
19 starts, which is not human induced, and it burns, it
20 would be very difficult to protect one natural area.

21 Q. Yes.

22 A. Yes, probably, depending on the fire.

23 Q. Likely, isn't it, it would be very
24 difficult?

25 A. No, not necessarily because unless

1 your forests burn very differently than I'm used to,
2 which is possible. We have two types of fire, we also
3 have a creeping ground fire which may burn for months
4 which does not destroy the forest, it cleans out the
5 understorey and reduces fuels. Those are relatively
6 easy to contain around an area like this.

7 If you have the crown fire which replaces
8 the stand, which kills the forest and starts it over,
9 that I submit would be very difficult to stop.

10 Q. Yes. And concentrating on the latter
11 kind of fire, leaving aside the creeping ground fire
12 that burns for months.

13 A. If you concentrate on the latter, it
14 would be difficult.

15 Q. Yes. And difficult not only in the
16 sense of controlling within the designated reserve
17 area, but also in terms of protecting values adjacent
18 to or contiguous to that reserve area; am I right?
19 Difficult to control within the area designated for a
20 reserve within it?

21 A. Mm-hmm.

22 Q. But also very difficult to prevent
23 it, the fire, having an effect on the adjacent area?

24 A. Well, I would assume so, because I
25 don't see that the two are necessarily separated.

1 Q. Well, let me give you a more concrete
2 example then. In the schematic Exhibit 1680 that we
3 were discussing this morning, as I understood your
4 evidence, you were contemplating that stands of old
5 growth, for example, would be designated to be managed
6 in a particular way to be protected over time.

7 A. Mm-hmm.

8 Q. Am I right? You have to say yes or
9 no, sir, for the record.

10 A. Oh, I'm sorry. Yes, Ma'am.

11 Q. And as I understood your evidence, in
12 at least some instances those designated old growth
13 stands would be on very productive landscape areas, the
14 areas where we would most wish to grow trees?

15 A. Yes.

16 Q. Yes. And that implies, I take it,
17 that the designated reserve old growth stands could
18 very well be surrounded in those instances by high
19 value timber stands that, in the normal course, would
20 be harvested subject to whatever management plans there
21 are in the area?

22 A. Yes, correct.

23 Q. So what I'm suggesting to you is that
24 fire control on set aside areas of that kind becomes
25 extremely important, not only for protection of the old

1 growth value itself, which is the subject matter of the
2 reserve, but because of the endangerment of the high
3 value timber stands near it, in that scenario?

4 A. I'm sorry, I lost track of where you
5 were headed with that. I apologize. Would you repeat
6 that, please.

7 Q. All right. What I'm suggesting to
8 you is in the schematic, 1680 that you've got, you have
9 got islands of protected old growth, may I put it that
10 way?

11 A. Yes.

12 Q. And around the islands of old growth,
13 in at least some cases you said, presumably there will
14 be high timber values because you have said that some
15 of these will be on productive land.

16 A. Or they could all have been logged.

17 Q. Yes. Assuming that they're not.

18 A. Okay, assuming they're not, yes.

19 Q. Then would you agree with me that
20 around the island of protected old growth there could
21 very well be remaining high value timber stands?

22 A. Yes.

23 Q. On very productive land?

24 A. Yes.

25 Q. And that therefore, in those

1 situations, control of fire--

2 A. Yes.

3 Q. --be it man initiated or nature
4 induced--

5 A. Mm-hmm.

6 Q. --is extremely important not only for
7 the risk inherent to the protected old growth component
8 itself, the subject matter of the reserve, but as well
9 because it endangers the high value stands on the
10 productive land around it?

11 A. Looking at the stands and the land
12 around from an economic point of view, fire control
13 would be important, yes; from an ecological view, no.

14 Q. T thought the two were very much
15 interrelated in your perspective on the world. Are
16 they not?

17 A. Economics looks at it as a product,
18 the standing timber on the good growing sites. Fire in
19 an ecological system, if this timber gets burned, it
20 gets burned as part of the ecological process.

21 I look at the world as value neutral
22 first, and so if I look at it ecologically then fire,
23 regardless of what it burns, if it's part of the
24 natural, normal cycle is okay, I don't have a value on
25 it.

1 If I'm looking at it from the economics
2 of the timber, then of course fire has a negative value
3 until the timber is harvested, and then it may have a
4 positive value in helping to recreate the next stand.

5 Q. There's no area of disagreement
6 between us on this issue; is there, Mr. Maser, and that
7 is: It's your evidence that sustainable forestry
8 requires a sustainable forest industry in whatever
9 jurisdiction you're talking about?

10 A. Sustainable forestry, yes, yes.

11 Q. It's an objective to ensure a
12 sustainable forest industry in whatever jurisdiction?

13 A. Mm-hmm.

14 Q. All right. And all I'm really
15 suggesting to you is that if there are stands adjacent
16 to an island of protected old growth that are
17 recognized to be of high value in an economic sense
18 that there is a real endangerment of those stands
19 without proper fire control on reserved old growth
20 areas; is that correct?

21 A. Yes.

22 Q. Thank you. Can we also agree
23 generally --

24 A. Excuse me, Ma'am. You said something
25 which I wasn't quite sure of. When you said -- the

1 last part you said, endangerment on old growth
2 reserves, I thought we were talking about the economic
3 area around the reserve is where the endangerment would
4 be. That includes the reserve.

5 Q. That's right.

6 A. Okay.

7 Q. That's right. I'll leave the point.

8 I think we understood.

9 A. Okay.

10 Q. I suppose the only final matter that
11 I wanted to address arising out of our discussion this
12 morning, Mr. Maser, is this: That in terms of the
13 degree of disturbance that is occasioned by natural
14 wild fire, for example - and leave aside your creeping,
15 ad infinitum, month-long fires, or various -- of that
16 kind, leave aside the creeping fire - can we agree that
17 the degree of disturbance occasioned by natural wild
18 fire is very much greater in general terms than the
19 degree of disturbance effected by clearcutting?

20 A. No.

21 Q. As a general proposition, would you
22 agree with that?

23 A. No.

24 Q. Have you ever done --

25 A. Clearcutting is a much greater

1 disturbance than fire.

2 Q. In ecological terms?

3 A. Yes.

4 Q. And why, sir, do you say that?

5 A. Because fire does not remove the
6 wood, the biological capital is reinvested, it's left
7 on site and is reincorporated into the soil.

8 Clearcut logging removes that, and so
9 you're taking something off the site, you're compacting
10 the site at the same time, you're eroding the site at
11 the same time, and fire does none of those.

12 Q. That depends very much on how the
13 clearcutting is carried, would you agree?

14 A. No.

15 Q. As to whether --

16 A. The degree to which it is compacted,
17 the degree to which it is eroded, but not the fact that
18 it is compacted and eroded, if you use equipment on the
19 ground.

20 We have had sites with very little
21 compaction where we use helicopter logging or balloon
22 logging, but where tractors are used, even skyline,
23 there are still some compaction. So it's a matter of
24 degree.

25 The point is, ecologically they're not

1 the same thing, clearcutting cannot substitute for
2 fire.

3 Q. I wasn't suggesting that they could.

4 A. No, I'm just saying they can't.

5 Q. I was trying to compare the relative
6 degree of difference in level of disturbance and I
7 understand your evidence to be, and the Board can
8 consider it with whatever other evidence it has on the
9 issue.

10 A. It's very different.

11 Q. It's very different. But you are
12 going further than that; are you not. I understood you
13 to disagree with me when I suggested that as a general
14 matter the level of disturbance occasioned by a natural
15 wild fire is greater than that effected by clearcutting
16 and you disagreed with that?

17 A. I disagree. In general it is the
18 other way around from my experience.

19 Q. Do we come then finally on this point
20 to this proposition: That in the set aside for reserve
21 areas that we discussed this morning, fire in some form
22 must be introduced to those areas to maintain
23 ecological processes?

24 A. That depends on the area and it
25 depends on whether, if it's a creeping ground fire,

1 perhaps; if it's a stand replacement fire, like a crown
2 fire, that would simply eliminate the stand and start
3 it over. So the type of fire is very important.

4 The creeping ground fire can maintain --
5 actually, the creeping ground fires often fire proof
6 the stand against the large forest killing fires.
7 Periodically the large forest killing fire comes along
8 and it starts the stand over, and that is a different
9 proposition. In that case the whole thing can go up.

10 But if you are trying to -- and this is
11 the struggle we had in ponderosa pine, we had creeping
12 ground fires that maintained the pine as an old growth
13 stand. If we do not do that what happens is the young
14 growth comes in underneath but it isn't all pine, it's
15 fir and it's cedar. That grows up through the stand
16 and it is the climax forest, our ponderosa pine is a
17 fire subclimax.

18 As these young trees grow up through and
19 they're shade tolerant, if fire does not go through,
20 they grow up into the crown and create what we call a
21 fire ladder, then a creeping ground fire has a fuel
22 ladder up into the crown and then it can burn the whole
23 thing.

24 So we had to make the choice: Do we risk
25 that, is that what we set the area aside for, or do we

1 have to introduce prescribed fire to kill out the
2 understorey as had been done "naturally historically".

3 If we're looking at maintaining the stand
4 is a ecological proposition; the creeping ground fires,
5 if that is part of the history, are necessary to manage
6 on a prescribed basis, that's what I'm getting at.
7 Otherwise the story -- the fire that is a stand
8 replacement fire, it eliminates the stand as it does
9 the surrounding country.

10 Q. My question, Mr. Maser, didn't
11 distinguish between types of fire at all.

12 A. I know.

13 Q. The proposition that I put to you was
14 that fire, in some form, would have to be introduced to
15 these reserve set aside areas in order to maintain the
16 natural ecological processes.

17 A. Not necessarily. That depends on the
18 forest type and whether or not to the degree that fire
19 is part of that system.

20 Q. Well, assuming that the natural
21 system had a fire, a fire cycle component to it as
22 Ontario's.

23 A. Okay. Then you may have to do that.

24 Q. Well, in fact, haven't you also said
25 to the Board that the fire suppression policy of this

1 century has been the single greatest disruption to the
2 natural ecological system that you can identify?

3 A. That is right.

4 Q. All right. So the concept then of
5 totally removing or preventing fire in set aside areas
6 of this kind is a form of that greatest natural kind of
7 disruption that you've identified?

8 A. Yes.

9 Q. Thank you. Can we return to the
10 subject then of your witness statement and your book.
11 I had asked you before lunch when the book was prepared
12 and published, both here and in the United States, and
13 you were good enough to provide those dates to me.

14 Am I correct with respect to your book
15 The Redesigned Forest, Mr. Maser, that it focuses
16 primarily on the forests of the Pacific northwest?

17 A. The examples are from the forests of
18 the Pacific northwest, a lot of the principles are from
19 forests outside the Pacific northwest. My major focus
20 was the northwest, yes.

21 Q. All right. And in terms of the
22 research that you conducted over the years to prepare
23 this book and subsequently your article published in
24 July, 1990, I take it in light of the evidence that you
25 gave this morning I would be correct in assuming that

1 you conducted no research particular to the Ontario
2 forestry environment for the purposes of preparing your
3 book or your article?

4 A. That is correct.

5 Q. All right. And as I understand the
6 evidence that you have given, although your book
7 focused on forests of the Pacific northwest, you
8 believe that the principles and concepts that you have
9 described to the Board and that are discussed in your
10 book are generally applicable to all temperate
11 coniferous forests wherever situate?

12 A. That is correct.

13 Q. And that has been your evidence to
14 this Board?

15 A. That is correct.

16 Q. Could I ask you to go to page 5 of
17 your witness statement then, Mr. Maser, please.

18 At page 5 and 6, Mr. Maser, you set out a
19 number of observations, ten in total, regarding what
20 you suggest is the design of nature with respect to
21 forests.

22 A. Right.

23 Q. Compared to what you suggest is, I
24 take it, the design of man with respect to forests; is
25 that correct?

1 A. Yes.

2 Q. And all of these observations, all
3 ten, as I understand it, are identified and discussed
4 in your book, The Redesigned Forest?

5 A. Yes.

6 Q. In fact, they comprise the entire
7 first part of the book, the first 50 odd pages or so, a
8 discussion of these items?

9 A. I guess. I don't know the page. I
10 guess the first part of it.

11 Q. And did you intend, Mr. Maser, either
12 by producing this witness statement for the Board or by
13 the evidence that you have given to the Board to
14 suggest that these ten observations were applicable the
15 to the northern Ontario forestry situation?

16 A. Specifically, no.

17 Q. All right. Do you know whether in
18 fact they are or not?

19 A. I can assume some of them are; I do
20 not know whether any of them are and I do not pretend
21 to.

22 Q. All right. Do I understand you to be
23 saying that you assume some but not all of them are,
24 but you don't know whether any of them are?

25 A. I presume some of them, if you use

1 clearcutting logging, some of them clearly apply, but I
2 am not making any statements specifically about Ontario
3 and no statement about Ontario was intended.

4 Q. And what you're saying is that you
5 are making an assumption based on general principles
6 that some of these observations may apply to Ontario,
7 but you don't know?

8 A. That is correct.

9 Q. Can we agree at the outset of this
10 discussion, Mr. Maser, that there is no basis known to
11 you on which to suggest that any of these ten
12 observations do in fact represent the situation in
13 northern Ontario?

14 A. Known to me, no.

15 Q. We can agree that there is no basis?

16 A. That is correct.

17 Q. All right. Mr. Maser, to make it
18 physically convenient, as the Board has one copy of
19 your book only - and I am not aware whether other
20 counsel have a copy of your book - we have photocopied
21 a number of extracts from your book which I propose to
22 give to you so you can refer to those.

23 A. Fine.

24 MS. CRONK: Madam Chair, may I suggest
25 just for convenience you may wish to give it a separate

1 exhibit number, but I am not particularly asking for
2 that. (handed)

3 MADAM CHAIR: This will be Exhibit 1681.

4 ---EXHIBIT NO. 1681: Extracts from book titled: The
5 Redesigned Forest by C. Maser,
submitted by OFIA.

6 THE WITNESS: I'm sorry, what was that
7 number?

8 MADAM CHAIR: 1681.

9 THE WITNESS: Thank you.

10 MS. CRONK: Q. Mr. Maser, you'll see
11 that Exhibit 1681, at least the extracts from your book
12 comprising this exhibit, are those pages from the first
13 49 or so pages of your book that specifically deal with
14 the observations set out at pages 5 and 6 of your
15 witness statement.

16 A. Yes.

17 Q. Just the title of each discussion as
18 distinct from the body of the discussion itself. All
19 right?

20 A. Yes.

21 Q. And looking at the very first
22 observation at page 5 of your book - I'm sorry, of the
23 witness statement, Mr. Maser, you have indicated and
24 suggested that:

25 "Nature designed a forest as an

1 experiment in unpredictability. We are
2 trying to design a regulated economic
3 plantation."

4 Do you see that?

5 A. Yes, I do.

6 Q. All right. And looking at the
7 extract from your book, page 4, am I right that the
8 companion observation is set out on page 4 at the
9 beginning of Chapter 1 of Part I of your book?

10 A. Yes.

11 Q. All right. Except that in the book
12 what you suggested was that:

13 "Nature designed a forest as an
14 experiment in unpredictability. We are
15 trying to design a regulated forest."

16 Do you see that?

17 A. Correct.

18 Q. So that the language you used in your
19 book was 'a regulated forest'; whereas the language
20 that you chose to use in your witness statement for
21 this Board was 'a regulated economic plantation'. Do
22 you see that?

23 A. Correct.

24 Q. And we can go through this - I am not
25 suggesting that we should do it in that laborious a

1 way, Mr. Maser - but I am going to suggest to you that
2 in respect of each of these observations in your book
3 and your witness statement the same change in language
4 appears, from 'a regulated forest', to 'a regulated
5 economic plantation'.

6 A. That is correct.

7 Q. All right. And am I correct, sir,
8 that in making that change the effect is to very much
9 change the connotation of the observation?

10 A. That is correct.

11 Q. And in fact the nature of the change
12 to the connotation is to suggest that there is by man
13 an effort to design a particular form of forest
14 component, that is an artificial one, a plantation?

15 A. Yes, but it has to go further. Since
16 I wrote the book I have looked at more and done some
17 rethinking of where I was before and I've come to the
18 conclusion that we do not plant forests as a rule, we
19 plant plantations and when we regulate that, to me,
20 because we simplify it over time for economic purposes
21 it ceases to be a forest and becomes a plantation;
22 therefore, I have changed the language I used, period,
23 not just in my witness statement.

24 Q. In fact the first observation you
25 were making wasn't focused in the first instance on

1 planting at all; was it, it was focused on a design,
2 what man tries to do in designing in the forest?

3 A. That is the same thing.

4 Q. It had no planting emphasis to it is
5 what I'm suggesting in your discussion in the book?

6 A. In the book, no.

7 Q. But in the witness statement it now
8 does?

9 A. It does.

10 Q. And that reflects a shift in both
11 connotation and thinking from considering both natural
12 and artificially -- both natural and artificial
13 regeneration or renewal or design efforts to only those
14 that are artificially induced, plantations?

15 A. Yes. If natural regeneration is used
16 to me, to my thinking that has evolved in this last
17 year, that can in fact be managed depending on how it
18 is designed over time in the context of a forest as is
19 being done in the Rocky Mountains with a native gene
20 pool. That is a very different proposition.

21 Q. Are you saying then that by virtue of
22 your rethinking or continued thinking since publication
23 of your book in Canada in 1990, that all of the
24 observations discussed in your book at pages 1 through
25 50 and as set out at pages 5 and 6 of your witness

1 statement should now be taken to apply to commentary on
2 artificial regeneration efforts, artificial design
3 efforts as opposed to man's activities, writ large, in
4 the forest?

5 A. What was the last part, at large?

6 Q. Man's activities, writ large, in the
7 forest; man's design efforts generally in the forest?

8 A. I would say -- I wouldn't say
9 generally, I would say the exception is probably where
10 we're starting to get into management in the more
11 natural setting at large.

12 Most of the management that I have seen,
13 making no generalization about Ontario, has been
14 regulated, in fact some of the documents that I have
15 seen talked about regulated in the document, regulated
16 forest.

17 The term regulated is the term that
18 suggests to me that there is an economic design. If it
19 is designed over time under nature's purview, then I
20 would not consider that a regulated forest.

21 Q. Well, does regulated to you mean, Mr.
22 Maser, regulated for an economic purpose or simply
23 managed in one form or another?

24 A. It can be managed or we manage it for
25 an economic purpose, therefore, to me they are

1 synonymous. If you manage it for something else
2 then -- let me back up.

3 It seems to me when we regulate -- when
4 we manage something for a specific end, like timber
5 production, depending on how it is done we are
6 regulating the cut, we are regulating the rotation, et
7 cetera, that is regulated.

8 On the other hand, if we are picking an
9 area, as they have done in the Rocky Mountains, where
10 they are not clearcutting, they are mimicking the fire
11 regime as much as they can, they have done some
12 selective logging, they have natural regeneration
13 coming in, and they are keeping in tact the forest
14 structure through time, I would not call that in the
15 same sense a regulated forest in the sense that I am
16 thinking of.

17 Q. It is regulation in one sense though;
18 is it not?

19 A. In the one sense, it is.

20 Q. And in fact if we set aside old
21 growth areas and young growth areas for research
22 purposes or monitoring purposes subject to management
23 plans and requirements, that too is a form of
24 regulation?

25 A. It is. In fact, what is happening -

1 and this is one of the concepts which is why I wrote
2 this article incidentally - what I see us doing is
3 shifting nature's landscape to a cultural landscape,
4 and I think that we're not going to have any choice but
5 to do that over time because even if we do not touch it
6 we have altered it with fire suppression and air
7 pollution. So we are creating a different landscape.

8 The question that we have to ask, and the
9 one that I am trying to address and have not completely
10 worked my way through is: How do we have a landscape
11 that is a cultural landscape and still sustainable
12 because there is a point at which we can over regulate
13 and do the system damage, there is a point at which we
14 can work with the system, you can call it regulate, you
15 can call it design, and we have really no choice up to
16 some point to do some manipulation.

17 Am I clear in what I'm trying to get
18 across? This is a fuzzy distinction to me at the
19 moment in terms of the fact that we're altering the
20 entire landscape, and I would submit that you are
21 altering the entire Ontario landscape also, and it
22 isn't the fact that we're altering the landscape, it's
23 how we're altering the landscape, that to me, needs the
24 caution.

25 I don't think we can do anything but

1 alter the landscape, we have already done so with air
2 pollution and fire suppression.

3 Q. It's just a question of determining
4 in what form the alteration should take place?

5 A. That is correct.

6 Q. All right. So to come back to what
7 we were talking about, and that is the observations set
8 out at pages 5 and 6 of witness statement, do I
9 understand then that all of the concepts and principles
10 that you were discussing in your evidence related to
11 these issues should be understood by the Board to refer
12 only to plantation regulation?

13 A. Primarily to plantation regulation.

14 Q. Well, what else? In 1 through 10 on
15 pages 5 and 6 that's what you're talking about; isn't
16 it, regulated economic plantations?

17 A. Yes.

18 Q. That's what we're talking about?

19 A. Yes.

20 Q. All right.

21 A. Okay. I see where you're coming
22 from. I will agree to that.

23 Q. And in the interrogatories submitted
24 by the OFIA you were asked to explain what you meant by
25 the term regulated economic plantation.

1 A. Mm-hmm.

2 Q. And define certain other aspects of
3 these observations. Could I ask you to go to Exhibit
4 1676, that is the first bundle of interrogatories, and
5 to look at Interrogatory No. 10, please.

6 A. Okay.

7 Q. Do you have that, sir?

8 A. Yes, I have it.

9 Q. With reference --

10 MS. CRONK: Sorry, that's Interrogatory
11 No. 10 of Exhibit 1676. That's the third page in.

12 Q. You were asked with reference to this
13 first observation, this suggestion that what we are
14 trying to do is to design a regulated economic
15 plantation, you were asked first to identify the 'we'
16 as used through each of the identified sub-paragraphs.
17 And your answer was, "Western civilization," "Man writ
18 large and western civilization"; correct?

19 A. Correct.

20 Q. And then you were asked to define the
21 term regulated economic plantation as used by you in
22 each of these ten observations and you did so as
23 follows:

24 "Regulated economic plantation refers to
25 a plantation that is regulated..."

1 A. Mm-hmm.

2 Q. "...simplified biologically in form
3 and function at the expense of short,
4 intermediate and potential long-term
5 biological diversity as an economic
6 crop."

7 A. Right.

8 Q. Now, as I understand the definition
9 that you have proffered, Mr. Maser, you are referring
10 to the intended introduction of and management of a
11 plantation for economic ends, that's how you define the
12 term?

13 A. Right. That includes all trees other
14 than -- all management other than natural regeneration
15 is a plantation.

16 Q. All management other than natural
17 regeneration?

18 A. Any time trees are planted it's a
19 plantation.

20 Q. The two may be different, sir. Are
21 you saying that every time trees are planted you're
22 calling it a regulated economic plantation?

23 A. That its correct.

24 Q. And then you were asked with respect
25 to each of the observations set out at pages 5 and 6--

1 A. Mm-hmm.

2 Q. --to indicate first -- sorry, to
3 provide any essentially supporting documentation or
4 information that you had upon which you relied to
5 suggest that these observations applied to the area of
6 the undertaking. Do you see that, that's in
7 subparagraph (c)?

8 A. Mm-hmm.

9 Q. And you were then asked that if they
10 do not apply to the area of the undertaking, to please
11 so indicate; do you see that?

12 A. Mm-hmm.

13 Q. Did you understand that what you were
14 being asked to do was simply to indicate whether you
15 said these observations applied to northern Ontario
16 and, if they did, on what basis?

17 A. Yes, I understood that.

18 Q. All right. And then your answer in
19 subparagraph (c) was, "see premises 1 and 3 in the
20 general introduction to these interrogatories";
21 correct?

22 A. That is correct.

23 Q. Could we go to those premises,
24 please. At the very first page of Exhibit 1676 the
25 introductory paragraph reads as follows - back up for a

1 moment, Mr. Maser.

2 Am I correct that this list of premises
3 was provided to the OFIA by you in response to the
4 interrogatories which we submitted, and an identical
5 list of premises was provided to the Ministry of
6 Natural Resources in response to the interrogatories
7 that they submitted?

8 A. That is correct.

9 Q. And the introduction to the premises
10 reads as follows:

11 "I am going to define at the outset the
12 premises on which I had answered the
13 interrogatories and on which I will
14 testify."

15 Stopping there for a moment, I take it
16 that you were attempting to very clearly indicate the
17 basis on which you would be prepared to give evidence
18 or be preferred to answer the interrogatories.

19 A. That is correct.

20 Q. And the first premise set out in
21 paragraph 1 is as follows, and you alluded to this
22 earlier this morning:

23 "I am here to share my understanding
24 of data after more than 20 years as a
25 research scientist. This I will do. I

1 am not here to defend either myself or my
2 understanding and interpretation of the
3 data. I will therefore assume the
4 appropriate posture (see Maser in the
5 Journal of Forestry, 1991, in press)."

6 A. Correct.

7 Q. Do you see that. That's the first
8 premise?

9 A. Right, yes.

10 Q. And if I understood this correctly,
11 Mr. Maser, what you were communicating to the parties
12 to this hearing and intending to say to the Board was
13 that you were not prepared in the course of your
14 evidence to the Board to defend your understanding of
15 any data which you presented to the Board?

16 A. Correct.

17 Q. Or your interpretation of any data
18 which you presented to the Board?

19 A. That is correct.

20 Q. And premise 3 to which you also
21 referred us, reads as follows:

22 "I am here to point out the commonalities
23 of ecological processes and principles
24 and most the probable ecological
25 consequences of various types of

1 management within and among different
2 portions of the coniferous forests
3 ecosystems (see, for example, Thomas,
4 1979)."

5 And you indicate that that is what you
6 would do. Then you went on to say:

7 "I am not here to defend or to quibble
8 about a given piece of research, a
9 management practice or an idea because it
10 was or was not done, used or thought of
11 within a particular political boundary
12 which has nothing to do with the
13 biological sustainability of the forest
14 in question."

15 That was your third premise.

16 A. Yes.

17 Q. All right. As I understand what
18 you've effectively said in these premises, Mr. Maser,
19 is that you would do, I assume your best, to outline
20 for the Board what you perceive to be certain
21 commonalities of processes and principles in ecological
22 terms, but that you were not prepared to have your
23 interpretation or understanding of a scientific data
24 underlying those processes probed or tested in any way;
25 am I reading this right?

1 A. I am not going to defend them, that
2 is correct.

3 Q. And am I correct that your
4 understanding, your understanding of the commonalities
5 of the ecological processes and principles is based on
6 the scientific data as known to you?

7 A. That is correct.

8 Q. And am I correct that your
9 interpretation of the commonalities of the ecological
10 processes and principles as known to you is based on
11 the scientific data of which you are aware?

12 A. And my experience.

13 Q. Yes.

14 A. Which is always an individual
15 interpretation.

16 Q. And your understanding of what you
17 call the most probable ecological consequences of
18 various types of management is based on the scientific
19 data known to you?

20 A. Observation and understanding
21 included, correct.

22 Q. And your interpretation of the most
23 probable ecological consequences of various type of
24 management is again based on your observations and
25 scientific data as known to you?

1 A. That is correct.

2 Q. None of which you are prepared to
3 defend?

4 A. No, there is no defence.

5 Q. Do you acknowledge that others may
6 feel a little differently about that?

7 A. They may feel 180 degrees different,
8 and some of them do.

9 Q. In effect, Mr. Maser, are you not
10 asking this Board to accept the ecological processes
11 and principles which you've outlined to them and the
12 consequences that you predict essentially on faith?

13 A. Ma'am, we do everything on faith,
14 science is based on faith. You can ask -- let me put
15 it another way. I have learned over the years in
16 science, scientists like to think they're objective and
17 that we don't deal with faith.

18 We have faith that our hypotheses are
19 workable, we have faith that the apparatus works, we
20 have faith that we understand what we're looking at.
21 Everything we have do is based on faith. I take that
22 as a given.

23 What I'm suggesting is, having been
24 through this process a number of times you can find as
25 many ways to interpret something just about as you can

1 find scientists and I find absolutely no value in one
2 person defending one point of view, when everyone is
3 right from his or her point of view. That to me makes
4 no sense.

5 If what I have presented makes sense to
6 the Board, that is the Board's choice to do with it as
7 they will. But anything that I say you can find
8 something to counter, and I see no point in getting
9 into a quibble of whether how I see it or somebody else
10 sees it.

11 We can all look at exactly the same data,
12 because we've been through this in writing manuscripts.
13 I've had manuscripts where I've been in charge of 15
14 authors and it's taken us a week to figure out what we
15 were going to agree to agree on. So I don't see any
16 point in it.

17 Q. All right. What you're in essence
18 then saying, Mr. Maser, as I understand it, is that
19 you're asking the Board to accept the principles and
20 processes that you've outlined and the consequences
21 that you have predicted on an untested basis, on faith.

22 A. No, not untested. Let me put it
23 another way. As I said in the beginning, I offer these
24 as a gift of ideas. If they have value that is fine;
25 if they do not, I am not going to quibble about them,

1 I'm not going to try and defend them. I have done the
2 best I can do here. I can get reams of data in some
3 cases to say, well, this is this and this, and this
4 person interprets it this way. I think the Board's
5 intelligent enough that that is not necessary.

6 Q. All right. Well, leaving aside the
7 respect that we all have for the decision-maker and the
8 Board in this case, Mr. Maser, my question is directed
9 to you.

10 A. Yes.

11 Q. And what I'm suggesting to you, sir,
12 is that in essence the position that you have placed
13 yourself in before the Board is that you're asking them
14 to accept what you term your gift of ideas at face
15 value, because you are prepared to neither defend your
16 understanding of nor your interpretation of the base
17 data and observations from which they derive; now,
18 isn't that the situation?

19 A. If you put it that way, I guess that
20 is true.

21 Q. All right. And that is true with
22 respect to all of the principles, processes and
23 consequences that you've described in your evidence to
24 the Board?

25 A. Yes.

1 Q. And when you were asked in
2 Interrogatory No. 10 in an interrogatory by the OFIA to
3 indicate in a, what I have to say was, we thought, a
4 clear fashion, whether the observations at pages 5 and
5 6 applied to the area of the undertaking, you referred
6 us to the premises on which you were prepared to
7 testify and you declined to answer the question.

8 A. That is correct.

9 Q. And you did not indicate whether they
10 did or did not apply to the area of the undertaking.

11 A. That is correct.

12 Q. And that was true in fact in respect
13 of all and each of the ten observations; is that
14 correct?

15 A. That I don't remember, whether I said
16 it was all and each.

17 Q. Well, could I put it this way.

18 A. If I said so in here, it is correct.

19 Q. Could I put it this way, Mr. Maser,
20 that Exhibit 1676 is comprised of a large number of
21 interrogatories submitted to you by the OFIA.

22 A. Right.

23 Q. Am I right so far?

24 A. Yes.

25 Q. And that in many cases what you were

1 being asked to do was to indicate whether the
2 proposition that you'd advanced or assertion that you'd
3 made in your witness statement had any bearing in your
4 view, it was going to be your evidence, that it applies
5 to the area of the undertaking, and the answer that was
6 responded -- that was provided was a reference to the
7 premises. There was no indication of your view as to
8 whether it applied or not?

9 A. That is correct.

10 Q. All right. And is not also true that
11 in a large number of instances - so that we don't have
12 to go through each of these--

13 A. Mm-hmm.

14 Q. In a large number of instances, in
15 fact all of the ones comprising Exhibit 1676, that
16 where you were asked to provide any documentation, any
17 basis, any support for the suggestion that assertions
18 that you'd made applied to the area of the undertaking,
19 that was not done?

20 A. That is correct.

21 Q. And supplementary interrogatories
22 were submitted, again repeating - not in every instance
23 but in material instances - repeating those requests
24 and asking whether it was your opinion and going to be
25 your evidence that this applied to the area of the

1 undertaking and asking you to outline and particularize
2 the basis on which you would be giving those evidence
3 and, again, those were not answered?

4 A. They were not answered? They were
5 not answered because I was out of town.

6 Q. The supplementary interrogatories
7 were not answered because you were out of town?

8 A. That is correct.

9 Q. But the original ones weren't
10 answered because you chose not to?

11 A. That is correct.

12 Q. And I suppose what troubles me also,
13 Mr. Maser -- to be completely fair to you so that you
14 understand the proposition I'm putting you, what
15 troubles me also about the observations at page 5 and 6
16 that you've made and on which you elaborated in your
17 oral evidence to the Board is that the language change
18 that was made - and I understand the evidence you've
19 given as to why it was made - but the language change
20 that you've made between the premise in the book that
21 you explored and what you said in the witness statement
22 that came to this Board, has the effect; does it not,
23 of comparing on the one hand nature's design work, writ
24 large, in every respect --

25 A. I'm sorry, Ma'am, what do you mean

1 writ?

2 Q. Sorry, taken in the largest sense.

3 A. Okay.

4 Q. Read broadly.

5 A. Okay.

6 Q. It has on the one hand the effect of
7 comparing nature's design work in the forest in a large
8 broadened sense--

9 A. Mm-hmm.

10 Q. --to, on the other hand, a very
11 narrow minor component of the activity of man in the
12 design of the forest, that is a plantation activity?

13 A. I would not say that the design of
14 the forest is minor because we are redesigning the
15 whole concept of the forest. Plantation may or may not
16 be minor, in some areas it is the major thing that is
17 done; in other areas it may be minor.

18 Q. All I'm suggesting to you, Mr. Maser,
19 is this and I'd ask you if you can agree, that in the
20 realm of activities that are undertaken in forest
21 management, plantation management, the creation of
22 plantations is but one activity, there are many others?

23 A. That is true.

24 Q. All right. And What I'm suggesting
25 to you, sir, is that when you objectively - I'm asking

1 you to do this - take a look at the observations you've
2 made at page 5 and 6 about what nature does on the one
3 hand and what you say man is doing on the other, what
4 you've done is you've compared nature's work in the
5 forest in a very broadened and large sense and you're
6 comparing it to one form of activity only conducted by
7 professionals in forestry and that is plantation
8 management. That's the effect of what you've done; is
9 it not?

10 A. I suppose you can read it that way.

11 Q. Right. And what that means in
12 essence, I suggest, is a quite unbalanced comparison.

13 A. Well, that comparison can be
14 broadened, if you like, because --

15 Q. That may be and we'll come to that.

16 A. Okay.

17 Q. But on the comparison that you made
18 in the witness statement that you've given to the
19 Board --

20 A. What do you mean by narrow? Explain
21 that to me.

22 Q. I'm suggesting that it's quite an
23 unbalanced comparison.

24 A. In what way?

25 Q. You're not comparing apples and

1 oranges. All of nature's activities on the one hand to
2 a selected activity of man on the other, that's not a
3 balanced comparison?

4 A. Okay, I accept that.

5 Q. Am I correct also in suggesting that
6 in all of the observations at page 5 and 6 as
7 elaborated upon in your evidence, given their exclusive
8 focusing on the creation or design - to use your
9 language - of a regulated economic plantation, that
10 they exclude entirely all natural regeneration efforts?

11 A. Yes.

12 Q. All right. They exclude as well; do
13 they not, any man-assisted natural regeneration
14 efforts? For example, are you familiar --

15 A. You mean a cutting design for natural
16 regeneration?

17 Q. Yes.

18 A. Yes.

19 Q. All right. They exclude that?

20 A. Yes.

21 Q. And they exclude such things as
22 scarification for natural, anything that's done in the
23 field to assist nature's renewal process?

24 A. That depends on how the -- I see what
25 you're saying, that is the way it would come across,

1 yes.

2 Q. Well, that's in fact what you've
3 done; isn't it?

4 A. I understand what you're saying, yes.

5 Q. Am I right in that?

6 A. The way it is written, that is the
7 way it would be taken, yes.

8 Q. Yes. And that's what you did in your
9 evidence to the Board, you weren't addressing your mind
10 to those other kinds of activities?

11 A. I wasn't addressing my mind --

12 Q. You were dealing with in your
13 evidence dealing with these premises you had a focus on
14 what you've termed the creation of regulated economic
15 plantations?

16 A. No. In my testimony these last two
17 days.

18 Q. Yes.

19 A. No.

20 Q. In dealing with those observations
21 that was certainly true; was it not?

22 A. No, it was not. I was talking about
23 forests in general.

24 Q. I see. All right.

25 A. Activities in general, planting in

1 general.

2 Q. Can we agree about this as well
3 though, sir, that in these observations and in the
4 remarks that you've made in the context of the
5 principles at page 5 and 6 that nowhere do you address
6 or take into account artificial management efforts that
7 do not involve planting, those two are ignored?

8 A. Ma'am, what I did with this is simply
9 go down and try and list the major comparisons that I
10 have seen take place in a succinct form.

11 Now, I understand what you're doing and I
12 think I understand where you're coming from.

13 When I went through this I was
14 speaking -- I mixed the two up. This was not
15 specifically just plantations, it was mostly
16 plantation, but when I talk about ecological
17 principles, which is what I came here to do, I do not
18 confine it to plantation versus forest, I'm talking
19 about the whole spectrum.

20 Q. But when you gave your evidence both
21 in writing and orally about all of these observations
22 and when you elaborated on that to the Board comparing
23 what nature does on the one hand and what you claim we
24 are doing on the other, you did not, I suggest, take
25 into account at all any form of artificial management

1 activity that was not planting?

2 A. Yes, I did.

3 Q. I see.

4 A. I was not even thinking about
5 planting.

6 Q. You certainly didn't in written form?

7 A. In that you are correct.

8 Q. All right.

9 A. But these last two days planting was
10 not in my mind, I was talking about redesigning the
11 forest in all its aspects.

12 Q. When you gave your evidence with
13 respect to these observations in your oral evidence you
14 didn't mention that then; did you, you were talking
15 about plantations then?

16 A. No, I was not.

17 Q. Well, neither of us have the
18 transcript, so we will have to deal with that at the
19 time, Mr. Maser.

20 A. At least not that I remember.

21 Q. The point that I'm coming to is this,
22 sir - and I suspect that I know the answer to this
23 question in light of the evidence that you gave this
24 morning - but are you familiar with, did you inform
25 yourself in any way about the renewal activities that

1 are actually carried out in the area of the undertaking
2 either by government agencies or by industry when you
3 gave this evidence to the Board about what it is that
4 we are doing in designing forests?

5 A. No.

6 Q. So you do not know then, I take it,
7 for example -- let's just take an example, what
8 percentage of the Industry's renewal efforts in the
9 area of the undertaking are comprised of natural
10 regeneration. You don't know?

11 A. No.

12 Q. And you don't know what percentage of
13 the Industry's renewal efforts in the area of the
14 undertaking are comprised of artificial regeneration
15 efforts other than planting?

16 A. Ma'am, I don't know anything about
17 that. So let's shorten it.

18 Q. And that being the case, Mr. Maser,
19 is it not, I suggest to you, quite unfair to be
20 suggesting in your evidence before this Board, at least
21 by inference if not at a higher level, at least by
22 inference, that what is happening in the forests of
23 northern Ontario based on your assumptions is a
24 preoccupation with regulated economic plantations to
25 the exclusion of other forms of management activity.

1 A. I did not mean to indicate to the
2 exclusion of other forms of activity. That was not my
3 intent.

4 Q. You were, however, suggesting a
5 preoccupation with plantation, regulated economic
6 plantation activities; were you not?

7 A. Preoccupation, no. The papers, the
8 documents that were sent to me talked about regulated
9 plantations, regulated forests.

10 So when I read through the documents
11 before I prepared that, I tried to address what the
12 documents were addressing. Those were the terms used,
13 that is why I selected those terms.

14 Q. You use the term regulated plantation
15 in your book; don't you? That term derives from The
16 Redesigned Forest?

17 A. No. I did not use the term
18 regulation until I wrote this, so far as I know. I do
19 not remember using regulation.

20 Q. Mr. Maser, I ask you to reconsider --

21 A. I said I do not remember.

22 Q. But it's possible that you did?

23 A. Sure it's possible.

24 Q. But your evidence is that you derive
25 that term from documents that were provided to you in

1 preparation for this hearing?

2 A. That's what I remember, yes, Ma'am.

3 Q. All right. What documents were
4 provided to you in order to prepare your evidence for
5 this hearing?

6 A. I don't remember because I don't have
7 them, I sent them back.

8 Q. Just in general terms, can you tell
9 me what you --

10 A. A box about that big.

11 Q. What do you remember reading?

12 A. I remember reading this, going
13 through this one.

14 Q. That being the Ministry of Natural
15 Resources witness statement No. 9?

16 A. I guess there's no number on here.

17 Q. What's the title?

18 A. In the Matter of Section 12(2) and
19 12(3) --

20 Q. Sorry. In the middle, what's the
21 title in the middle of it?

22 A. Statement of Evidence, Panel 9,
23 Silviculture and Forest Ecology.

24 Q. Thank you. So you read that. What
25 else did you read?

1 A. I don't remember, Ma'am, because it
2 was some months ago and I did not frankly pay
3 attention.

4 Q. Let's go to another one, Mr. Maser.
5 Could I ask you to look at observation No. 2 on page 5:

6 "Nature designed the forest over a
7 landscape. We are trying to design a
8 regulated economic plantation on each
9 acre."

10 Do you see that one?

11 A. Mm-hmm.

12 Q. Is that one of the ones that you
13 assume applies to northern Ontario?

14 A. If you plan areas, then I would say
15 yes. If you do forest planning, then we are planning
16 the acreas and that is what I am talking about.

17 Q. Perhaps the way to do this is this,
18 Mr. Maser. Could you just take a moment, please, and
19 look over your ten principles here and tell me which
20 ones you think have any bearing or application in any
21 way, recognizing this is an assumption on your part,
22 but which ones are you suggesting have any application
23 in the Ontario circumstances.

24 A. Okay. Any time we practice product
25 management, featured species management No. 4 would

1 apply, whether it's wildlife forests or anything else.

2 Any time a plantation is put in where
3 herbicides are used or otherwise simplified, No. 3
4 would apply.

5 Any time we redesign a forest by planning
6 and we plan the acres, whether we do it one at a time
7 or a thousand at a time 2 would apply.

8 Any time we suppress fire or other of the
9 dynamic destructive sources, No. 1 would apply.

10 Any time we put a value on a product as
11 opposed to simply seeing the processes without
12 valuation, No. 5 would apply.

13 Any time we constrain the species on
14 acres to selected ones which have economic value over
15 others, No. 6 would apply.

16 Any time we shorten rotations rather than
17 allowing the forests to go full cycle for an economic
18 profit, No. 7 would apply.

19 Any time we introduce herbicides or
20 pesticides to cut down the competition that we have
21 created in management, No. 8 would apply.

22 Any time we shorten rotations rather than
23 letting them go full cycle and we have even-age versus
24 variable age over large acres of the landscape,
25 excluding the fact that fire might do that, that would

1 apply. If fire has even-aged forests over the
2 landscape, that would not apply.

3 Any time that we single out a species to
4 harvest in relatively uniform economic rotations, No.
5 10 would apply.

6 And as I said before, and I repeat again,
7 I do not mean to be disrespectful or unfair, I have not
8 been in Ontario, I have no idea to what extent you do
9 any of these. If they are done, then this applies; if
10 they are not done, it does not apply. To me it is that
11 simple.

12 Q. And you're saying, sir, that by -- I
13 wish to be fair to you and I wish to understand what
14 your evidence is so that we can then deal with it.

15 A. Mm-hmm.

16 Q. Are you saying then that the mere
17 carrying out of certain kinds of activities that you've
18 just described--

19 A. Right.

20 Q. --is enough in your view to suggest
21 that these kinds of assertions apply to forestry in
22 northern Ontario?

23 A. That is correct. And they are not --
24 and I have the sense you're taking them as a judgment,
25 and they are not meant as that and they weren't meant

1 as that in the book.

2 I have tried very hard to make clear that
3 we are altering a design and that has consequences and
4 I am not saying that it's good, bad, right or wrong
5 because I don't know, and I don't know the outcome. I
6 do know that when we deviate from the ecological
7 principles, to the best of our understanding, if we
8 align ourselves with them what we do will probably be
9 sustainable and fine into the future; to the extent
10 that we deviate and short cycle the principles, based
11 on a book by John Perlins which goes back to Babylonian
12 times in deforestation and management, we are in for
13 some problems based on a long historical record.

14 That's all I'm trying to point out. I am
15 not pointing fingers, I am not saying somebody's right
16 or wrong, good or bad, or you should or should not do
17 anything. That was not the intent. If it comes across
18 that way, I apologize for it.

19 Q. Could I ask you to look at item No. 2
20 for example on page 5, Mr. Maser.

21 A. Mm-hmm.

22 Q. That's the one we looked at a moment
23 ago in which you suggested that what we were trying to
24 do was to design a regulated economic plantation on
25 each acre. I take it you didn't literally mean on each

1 acre?

2 A. No.

3 Q. You weren't intending to suggest that
4 there was a preoccupation with plantations in
5 preference to other forms of management activities?

6 A. No, that was not the intent.

7 Q. All right.

8 A. No.

9 Q. And you're not suggesting that now?

10 A. Uh-huh.

11 Q. And with respect to item No. 3, for
12 example, in that item you suggest that nature has
13 designed a forest with diversity and a assertion, as I
14 understand it, is that man is trying to design a
15 regulated economic plantation with simplistic
16 uniformity. Do see that?

17 A. Mm-hmm.

18 Q. All right.

19 A. Yes.

20 Q. Do I understand you to be suggesting
21 there that in the plantation management that's
22 undertaken what we're really trying to do is create
23 uniform monocultures, simple uniform monocultures; is
24 that what you meant?

25 A. Much of the time that is in fact what

1 we do.

2 Q. Do you have any basis or any reason
3 at all to think that's what's occurring in northern
4 Ontario?

5 A. I have no idea what's occurring in
6 northern Ontario.

7 Q. We shouldn't conclude with respect to
8 any of these that it is your view in any way that they
9 are applying in northern Ontario?

10 A. That is correct.

11 Q. All right.

12 A. If this occurring, however, then
13 these statements are relevant.

14 Q. If they are which?

15 A. If they are occurring, then these
16 statements are valid. I do not know if they are
17 occurring.

18 Q. Well, and you mean by that, that if
19 in Ontario we were designing, as you've defined it,
20 regulated economic plantations that were simple uniform
21 and monocultures, then the statement would be true?

22 A. That is true.

23 Q. I understand that.

24 A. Okay.

25 A. All right. Could I ask you to look

1 at No. 9, please, on page 6.

2 A. Yes.

3 Q. In this observation, Mr. Maser, you
4 are suggesting that nature designed forest to live
5 variable ages, some to 500 years and more, and you go
6 on to indicate, I take it, man is trying to design a
7 regulated economic plantation that in many areas may
8 seldom live 100 years.

9 Did you intend those observations to be
10 taken as applying, in your view, to northern Ontario?

11 A. No. I would say the same for this as
12 I did for the others. That includes all ten.

13 Q. I'm sorry?

14 A. That includes all ten.

15 Q. Yes. Well, let's just deal with No.
16 9 for the moment. Could I ask you to go to page 44 of
17 your book, please, and I think it's part of the
18 extract - yes, it is - part of the extract that I've
19 given you.

20 A. I have to find it here. What page?

21 Q. It's Exhibit 1681, page 44.

22 A. Okay.

23 Q. Do you have that, Mr. Maser? Do you
24 have that?

25 A. I have page 44.

1 Q. All right. The title to Chapter A to
2 Part I of your book reads Nature designed Pacific
3 northwest forest to live 500 to 1200 years.

4 A. That is correct.

5 Q. We are designing a forest that may
6 seldom live a hundred years.

7 A. That is correct.

8 Q. It is from that statement and that
9 discussion that the observation at page 6 is drawn; is
10 that correct, page 6 of your witness statement?

11 A. That's where the title is drawn, yes.

12 Q. And the discussion that follows is
13 the articulation of your views on that?

14 A. Yes.

15 Q. All right. And when you originally
16 formulated that precept it wasn't in the specific
17 context of the specific northwest forest?

18 A. Yes, it is.

19 Q. All right. Were you intending to
20 suggest in any way, Mr. Maser, that any of the species
21 indigenous to northern Ontario typically live 500 years
22 or more?

23 A. No.

24 Q. Could I ask you to go to the next
25 page, page 46.

1 A. Okay.

2 Q. Chapter 9 of Part I.

3 A. Mm-hmm.

4 Q. Entitled as follows: Nature designed
5 Pacific northwest forest to be unique in the world, 25
6 species of conifers, 7 major ones, the longest lived
7 and largest of their genre. We are designing a forest
8 based largely on a single species, short rotation. Do
9 you see that?

10 A. Yes.

11 Q. And again that observation I take it
12 was the origin or genesis of observation No. 10 at page
13 6 of your witness statement?

14 A. That is correct.

15 Q. And again, when formulated that
16 principle was specific to the Pacific northwest forest?

17 A. Not necessarily just the Pacific
18 northwest but primarily, it was not aimed directly at
19 Ontario in any way.

20 Q. And as we read from your book, at
21 least that at time, you were talking specifically about
22 the Pacific northwest forest?

23 A. That is correct.

24 Q. And again, Mr. Maser, do I take from
25 the evidence that you've given that this statement

1 should not be taken by the Board or by anyone as being
2 intended by you as being in any way referrable to
3 Ontario?

4 A. It was not intended by me to make any
5 direct statement about Ontario, that is correct.

6 Q. Then in your book or now?

7 A. My book had nothing whatever to do
8 with Ontario and it was not in the witness statement.

9 Q. But the statement you made in the
10 witness statement derives from this portion of your
11 book, and I am just saying--

12 A. Yes.

13 Q. --in your witness statement, neither
14 then in your witness statement nor now are you
15 suggesting that that is referrable to the northern
16 Ontario experience?

17 A. What I've been trying to get across
18 are the basic principles. The specifics of this have
19 nothing to do with Ontario; the principles that are
20 entailed in this may, of that I am not a judge.

21 Q. And you were assuming that that's the
22 case, but you don't know?

23 A. I'm assuming that may be the case.

24 Q. May be the case, might not be?

25 A. I have no idea.

1 Q. The first full paragraph immediately
2 before the table, as I understand it, is describing the
3 circumstances in the coniferous forests of the Pacific
4 northwest?

5 A. That is correct.

6 Q. All right. And you describe them as
7 being based largely on a single species, short rotation
8 monoculture that emphasizes the production of wood
9 fiber not the sustainability of a species rich forested
10 landscape; correct?

11 A. That is correct.

12 Q. All right. Can you briefly explain
13 to the Board, so that it is clear on the record, Mr.
14 Maser, what you regard as the chief characteristics
15 with reference to Table 1 of the coniferous forests of
16 the Pacific northwest?

17 A. Chief characteristics?

18 Q. Yes. Table 1 deals with certain
19 items typical of the forests in the Pacific northwest,
20 can you just encapsulate them for the Board very
21 briefly?

22 A. I'm not sure what you want besides
23 what's in this table. Can you rephrase that, please?

24 Q. First of all, let's deal with the
25 column species on the left, all right?

1 A. Yes.

2 Q. Those are the species, as I
3 understand it - please correct me if I'm wrong - that
4 are typically indigenous to the Pacific northwest?

5 A. That is some of them.

6 Q. Some of them?

7 A. Yes.

8 Q. And in your evidence to the Board,
9 you can't help us I take it as to how they compare, if
10 at all, to the species of northern Ontario because you
11 don't know the species?

12 A. That is correct.

13 Q. With respect to the typical age, age
14 of trees in the Pacific northwest, am I interpreting
15 the table correctly -- first of all, there are some 16
16 species listed. Am I correct that not one of them has
17 a typical age of less than 400 years?

18 A. Yes. They picked the longest lived
19 ones that we've got. There are others that live less.
20 Like lodgepole pine, is it a typical age of old growth
21 and dying between 80 and a hundred years.

22 Q. And a number of the species listed
23 can live for a thousand years or more?

24 A. Yes.

25 Q. As I understand it, Mr. Maser -

1 again, please correct me if I'm wrong - old growth
2 coniferous forests in the Pacific northwest developed
3 over long periods of time essentially free from
4 catastrophic disturbances such as wild fire?

5 A. They are free from the forest
6 replacement fire but not from the creeping ground
7 fires, that is correct.

8 Q. So that in effect it is not a fire
9 origin derived forest in the Pacific northwest in that
10 sense?

11 A. Oh, it is very much a fire derived
12 origin. In fact, it is a fire subclimax. Douglas-fir
13 happens to be very long lived in that sense, but
14 without fire it becomes hemlock and western red cedar
15 and there was originally we think very little climax
16 because of the extremely active fire regime throughout
17 the northwest, including along the coast.

18 Q. I may have misstated the question,
19 Mr. Maser. What I meant was, it is not a catastrophic
20 form of fire originated forest?

21 A. Yes, it is.

22 Q. It is.

23 A. Yes. However, the interval of the
24 catastrophic fire is very long; in other words, it's a
25 long time between. It may be centuries in a given area

1 before a catastrophic fire inbetween, where in the
2 boreal forest and in Alaska it may be -- the
3 catastrophic fires are probably much more frequent and
4 they're more frequent on the east side of the Cascades
5 than they are on the west side.

6 Q. And in that sense the forests here, I
7 suggest, may be materially different from the forest in
8 the Pacific northwest?

9 A. That is correct.

10 Q. And so that the record is clear, at
11 page 18 of your book -- do you have a copy of your book
12 with you, Mr. Maser, a full copy of the book?

13 A. No, Ma'am.

14 MADAM CHAIR: The Board is ready to take
15 a break, Ms. Cronk.

16 MS. CRONK: Perhaps I could provide it to
17 the witness then while you rise for your break.

18 MADAM CHAIR: Thank you. Will be back in
19 20 minutes.

20 ---Recess at 2:40 p.m.

21 ---On resuming at 3:05 p.m.

22 MADAM CHAIR: Please be seated.

23 MS. CRONK: Q. Mr. Maser, we were
24 discussing before the break certain of the
25 characteristics of coniferous forests in the Pacific

1 northwest region.

2 A. Correct.

3 Q. And could I ask you to refer to page
4 18 of your book, please. I'm sorry, I don't have an
5 extract for this.

6 A. That's fine.

7 Q. At the bottom of page 18 the last
8 paragraph on the page begins:

9 "Old growth coniferous forests in the
10 Pacific northwest developed over long
11 periods essentially free from
12 catastrophic disturbance such as wild
13 fire."

14 A. Correct.

15 Q. Is that your view of the development
16 of those forests?

17 A. Yes, that is one of the reasons they
18 reach that large and such great ages.

19 Q. And what is the typical fire cycle
20 for coniferous forests in the Pacific northwest?

21 A. In the catastrophic sense?

22 Q. Yes.

23 A. It was generally between anywhere
24 from 300 to 700 acres a years depending on the area,
25 and that is variable. This is why I was trying to

1 indicate before, I am always uncomfortable when I see
2 people average things, because it may burn -- there may
3 be catastrophic fires - that was on average - there may
4 be catastrophic they come about, as have happened,
5 every 30 years for a period and then be nothing for a
6 hundred years.

7 So you cannot average it on any acre, but
8 in general terms the age of the forests that we're now
9 harvesting tells us the last catastrophic fire that
10 created the stand, and if the stand is 400 years old,
11 the fire that created it was something more than 400
12 years ago.

13 Q. Thank you. Would you agree with me
14 that that is quite a different situation from a
15 situation in which the typical age span of trees
16 corresponds to a catastrophic fire cycle of something
17 less than a hundred years?

18 A. Oh yes.

19 Q. And then still dealing with Table 1
20 on page 47 --

21 A. I'm sorry, Ma'am, I closed that up.
22 Let me find it again.

23 Q. It's Exhibit 1682, Mr. Maser.

24 A. Let me see where I put it.

25 Q. Table 1 from your book?

1 A. Well, I'll go to the book. What page
2 was that?

3 Q. Page 47.

4 A. I got it.

5 Q. As I understand it, the table deals
6 with four different things, first the species typical
7 in the Pacific northwest, that is the first column on
8 the left; is that correct?

9 A. It does not mean typical species,
10 that is a typical diameter of what we find today.

11 Q. Sorry. I'm just looking at the
12 column entitled species on the far left. Are those
13 species representative of Pacific northwest, the 16 --

14 A. Among other areas, yes.

15 Q. Thank you. And then it also deals
16 with age relative to those species?

17 A. Correct.

18 Q. It also deals with diameter and then
19 height--

20 A. Correct.

21 Q. --relative to those species?

22 A. Yes.

23 Q. Just dealing then with height first,
24 if we might, am I reading the table correctly that the
25 table deals both with typical heights and maximum

1 heights -- I'm sorry, it deals with both typical and
2 maximum diameters and typical heights?

3 A. It deals with a range which would be
4 the diameters within which they are typically found.

5 Q. And dealing then with height, is
6 it --

7 A. It is the same.

8 Q. It's the typical height?

9 A. It's a range within which the typical
10 canopy "as much as one can characterize typical" is
11 found.

12 MADAM CHAIR: Ms. Cronk, are you trying
13 to demonstrate to the Board that trees in the Pacific
14 northwest are older, larger around and taller than the
15 trees we have in northern Ontario, because if that's
16 your point, we got that evidence before us on
17 characteristics of species in northern Ontario. So I
18 don't think we have to go through this table.

19 MS. CRONK: All right. Well, perhaps I
20 can abbreviate it then, Madam Chair. I wanted only
21 certain particulars from the table on the record before
22 you to ensure I was reading it correctly.

23 But I understand that the general
24 characteristics of them, from what you said, are
25 clearly established, I needn't belabour and I won't.

1 Q. May I then ask two remaining
2 questions with respect to the table, Mr. Maser. Am I
3 right that on the typical height aspect that range
4 extends from 98 feet to 325 feet?

5 A. It depends on which species you're
6 talking about.

7 Q. Yes. Throughout the grouping of
8 species, that's the smallest and greatest range?

9 A. Within a range, it would be -- 98 to
10 130 would be the range of a given species, or some
11 trees get up to 300 feet tall, that is true.

12 Q. All right. Are there also major
13 climatic differences insofar as you are aware between
14 the Pacific northwest and, for example, northern
15 Ontario?

16 A. Most definitely, there are between
17 western Oregon and eastern Oregon.

18 Q. Yes. Would that pertain to such
19 factors as the number of frost-free days, relative
20 humidities and the amount of precipitation?

21 A. And the fire regime.

22 Q. And fire regime as well?

23 A. That is correct.

24 Q. Would it fair as well to suggest that
25 there are major topographical differences between two

1 areas?

2 A. Obviously.

3 Q. With respect to the typical age of
4 old growth in the Pacific northwest, does that vary
5 from species to species?

6 A. Yes. Some species are not as subject
7 to disease following injury as others, so they are
8 longer lived, that is correct.

9 Q. Would it be fair to suggest, as some
10 witnesses have before the Board, that typical old
11 growth in the Pacific northwest would be in the range
12 of 600 plus years?

13 A. It depends on which species you're
14 talking about.

15 Q. All right. Let's take, for example,
16 Douglas-fir?

17 A. Douglas-fir, from 300 to 600, 700
18 lodgepole pine, 80. When you get into the north facing
19 slopes and the mixed conifer, such as our western larch
20 and grand fir, it's 160.

21 Q. What about cedar?

22 A. Cedar reaches what we would consider
23 the old growth condition probably somewhere around 300
24 years. Douglas-fir reaches the old growth condition at
25 about 250 years of age.

1 Q. What about hemlock?

2 A. Hemlock, I would say, is probably --
3 it's a much shorter lived tree, probably reaches the
4 old growth condition between 150 and 200 years of age.

5 Q. Would I be correct in assuming, Mr.
6 Maser, that given all those differences between the
7 circumstances encountered in the Pacific northwest and
8 those in other jurisdictions, including northern
9 Ontario, that it may very well be true that the
10 composition of and the state of the soils in the
11 Pacific northwest are fundamentally very different than
12 they are here?

13 A. The soils are different, the
14 principles aren't.

15 Q. Including the state of the soils?

16 A. The soils are different, which is the
17 state; but the principles that govern the soils are --
18 have a lot of commonalities, they go across -- soils
19 perform as soils. They have different peculiarities,
20 but the basic principles of the requirement of
21 mycorrhizal fungi, for example, or organic material,
22 those principles hold, but the conditions are
23 different, yes.

24 Q. All right. So you're saying that the
25 properties are common to soils generally?

1 A. The properties may different based on
2 parent material, but the processes have commonalities,
3 is what I'm saying.

4 Q. And would it be fair of me to suggest
5 as well that the extent of depletion or impairment of
6 soil productivity in the Pacific northwest may again be
7 fundamentally different from that in northern Ontario?

8 A. Oh, that can be different from
9 northern Ontario to southern Ontario.

10 Q. It follows then that even more
11 dramatically so in forests separated by that distance?

12 A. Yes.

13 Q. Would it follow as well that the
14 degree of adaptability of the soils to disturbances may
15 very well be different between the Pacific northwest
16 and those encountered here in northern Ontario?

17 A. They undoubtedly are different, I
18 would suggest however that the further south you get
19 with the larger trees, the richer forests, and the
20 further north you get, the further north you get is
21 similar to higher elevation.

22 And all of the work we have done suggests
23 that the higher elevation has much more rigid limits of
24 stress than lower elevation, therefore -- and the same
25 is true in Alaska, so between the southern part of

1 Alaska and the northern part of Alaska, in north Alaska
2 it's a much more fragile, rigid system because of the
3 northern latitude than it is the southeastern part of
4 Alaska, and I would suggest that those kinds of
5 differences would probably apply across Canada also, as
6 a generalization.

7 Q. Would you agree with me that given
8 those differences, Mr. Maser, pertaining not only to
9 soils, not only to species and the characteristics of
10 various species found in the Pacific northwest, but as
11 well the issue of the depletion of or adaptability of
12 the soils, all of those issues, that we must at the
13 very least be cautious about extrapolating scientific
14 observations from the Pacific northwest to the northern
15 Ontario situation?

16 A. I have not -- I was not aware that I
17 extrapolated them.

18 Q. I didn't suggest that you did, sir.
19 But I'm putting to you that it would be wise to be very
20 cautious before making an extrapolation of that kind?

21 A. Caution is always wise.

22 Q. And in this particular case, given
23 the variabilities that we have discussed between the
24 conditions in the Pacific northwest and those in
25 northern Ontario, would I be correct in suggesting that

1 it is quite appropriate that we be very cautious about
2 importing scientific observations from the Pacific
3 northwest to this province?

4 A. To the extent that you're dealing
5 with principles and the processes, I think they are
6 fairly common; to the extent you're dealing with how
7 certain things function and which species are involved
8 and which genre are involved, they will be different
9 and so caution is always called for.

10 Q. Does it go beyond that as well, Mr.
11 Maser, that quite apart from any commonality in
12 conceptual terms of the processes and the principles,
13 the actual conditions may be very, very different
14 between the two jurisdictions?

15 A. The processes and principles are a
16 commonality that goes beyond the conceptual realm. How
17 they impact or how they are affected from a northern
18 latitude to a southern latitude, the magnitude of the
19 impact is different, the principles are the same.

20 We demonstrated that between the U.S. and
21 Europe. So if it's the same between the U.S. and
22 Europe, I will make the assumption that Ontario is not
23 a special case; however, the species in Europe and the
24 species in the United States and the degree of
25 magnitude with which a given principle has an impact on

1 a given area, that differs and that must be interpreted
2 on an area by area basis.

3 Q. That would be true as well, I
4 suggest, for the consequences of any impacts found to
5 have actually occurred?

6 A. What would be true, that they would
7 differ?

8 Q. The consequences would differ from
9 jurisdiction to jurisdiction, depending upon the forest
10 conditions and circumstances?

11 A. Let's drop this term of jurisdiction,
12 because that has nothing to do with anything. From
13 area to area, yes, the consequences -- there are some
14 principles we have discovered that are carryovers in
15 commonalities, compaction is compaction.

16 Now, how it affects the soil and how long
17 the compaction lasts, that will differ from area to
18 area, but the basic principles we're beginning to
19 understand of what compaction does belowground may be
20 very similar from one area to the next, but they may
21 not last as long because of differences in soil types.

22 Q. So the consequences for that reason
23 and others can vary from area to area?

24 A. That is true.

25 Q. All right. And just dealing with

1 what you've described as being the commonality of
2 principles, and let's talk about it for a moment, if we
3 might, in the northern Ontario context.

4 Am I correct that - and please correct if
5 I'm wrong - but do I understand correctly that what
6 you're saying to the Board is certain principles have
7 been identified on the basis of the research that you
8 and your colleagues and others have done, and there
9 have been certain comparisons made, for example, you
10 said between areas in the United States and Europe that
11 suggest they are common to those areas; am I right so
12 far?

13 A. Mm-hmm.

14 Q. Sorry, for the reporter.

15 A. Pardon me. I'm sorry, yes.

16 Q. Yes. Thank you. Am I correct that
17 in order, from a scientific point of view, to be
18 assured that those principles had uniform application
19 that it would behoove researchers to investigate and
20 find out whether in fact the principles do operate on
21 an area by area basis rather than assuming that they
22 do?

23 A. No, I don't think that is necessary.
24 I think what is necessary to find out is how they
25 operate and to what extent. That they operate, I

1 think, is generally taken as a given when you have them
2 in enough areas, otherwise what you're saying is, we
3 have to look at this specific area or I'm not going to
4 believe any of the evidence, which gets back to the
5 gentleman I was talking about that research on the elk
6 were done all around his county but it didn't apply to
7 his county even though they summered in one county and
8 wintered in the other.

9 That does not make sense. But how and to
10 the degree those principles interact, that needs to be
11 looked at, yes.

12 Q. From area to area?

13 A. Yes, and that can be -- that can
14 differ from one side of one mountain to the other side
15 of the mountain, from an elevation of 200 metres down
16 to sea level.

17 Q. And obviously the degree to which
18 they operate will affect how relevant they are in a
19 particular area?

20 A. Not how relevant they are, how they
21 must be dealt with in order to maintain whatever it is
22 you desire to do with the system.

23 Q. All right. If you prefer, how
24 important an issue it is?

25 A. That is correct.

1 Q. And that will vary from area to area
2 depending upon the degree to which they operate?

3 A. That is correct.

4 Q. Now, turning to another matter that
5 you dealt with in your evidence, Mr. Maser, and that is
6 the research that you described to the Board that had
7 been done both by you and by others concerning
8 mycorrhizal relationships and belowground processes
9 between plants and soils, you outlined to the Board
10 through your photos and slides in some detail what you
11 understood those relationships to be and what the
12 research literature with which you're familiar
13 indicates they are. Am I right in that?

14 A. Mm-hmm, that is correct.

15 Q. All right. Would it be fair of me to
16 suggest that research into those issues - and
17 specifically now I'm talking about mycorrhizal
18 research, mycorrhizal relationships - did not begin, if
19 I can put it that way, in the Pacific northwest but in
20 fact they have been the subject of research in Ontario
21 dating from as early as the 1950s?

22 A. And in Europe dating since the 1800s.

23 Q. In Europe since then and also -- was
24 that a yes, that in Ontario since at least the 1950s?

25 A. I don't know about Ontario.

1 Q. Are you familiar with the work of
2 Slankus?

3 A. No.

4 Q. No?

5 A. No.

6 Q. All right.

7 A. I can help you with that. The area
8 that I have dealt is the small mammal part of it, my
9 colleague who dealt with the rest, is a mycology, so we
10 did this together.

11 Q. All right. Are you familiar with the
12 work of Andre Fortin of the University of Laval?

13 A. No, Ma'am.

14 Q. Are you familiar with the work of
15 Helmut Krause from the University of New Brunswick in
16 this area, on this issue I'm talking about?

17 A. I have heard of it. My colleague is
18 familiar with all of these, I am not.

19 Q. Just so that I understand your
20 familiarity. Are you familiar with the work in this
21 area by Browning of the Great Lakes Forestry Centre?

22 A. No.

23 Q. Insofar as you are aware, is research
24 in Ontario continuing in this area and on the issue of
25 mycorrhizal relationships belowground and elsewhere?

1 A. I have no idea. No, I do not know.

2 Q. Are you familiar, Mr. Maser, with the
3 nature of any operational trials conducted in the last
4 decade in northern Ontario either by government
5 agencies or by Industry in this province concerning
6 mycorrhizal relationships or mycorrhizae inoculated
7 seeds and seedlings?

8 A. No.

9 Q. Would you have any reason to disagree
10 were I to suggest that the issue of such belowground
11 processes and the general area of mycorrhizal
12 relationship research is one that has been identified
13 in this province and considered in research continuing
14 to date for the last 30 years?

15 A. Some aspect of it, obviously, has
16 been taking place.

17 Q. You wouldn't disagree with that?

18 A. No.

19 Q. Would you have any reason to disagree
20 were I to suggest that the issue of mycorrhizal
21 relationships and belowground processes in that respect
22 are matters of active operational attention in forestry
23 in northern Ontario?

24 A. I would have no idea.

25 Q. And you would not then, I take it, so

1 that I'm clear as to what information you were
2 provided, I take it you are not familiar with and can
3 not assist with respect to any efforts either by
4 Industry or government agencies in northern Ontario in
5 an operational context on those issues?

6 A. That is correct.

7 Q. One final matter, very quickly if I
8 might. You mentioned in your evidence to the Board, I
9 believe yesterday, your view that it would be
10 advantageous - that's my word, I think that's the
11 essence of what you were saying, and you'll correct me
12 if that's incorrect - that it would be advantageous to
13 initiate and to encourage increased research exchanges
14 between the United States and Canada. Did I understand
15 that correctly?

16 A. Yes.

17 Q. And I take it other areas as well?

18 A. Yes.

19 Q. On the issue generally of research
20 exchanges between our two jurisdictions, Mr. Maser,
21 would I be correct in assuming that you are personally
22 not aware of the extent and nature of all the current
23 research scientists exchanges between Ontario and
24 various U.S. jurisdictions?

25 A. In Ontario specifically, no.

1 Q. And similarly, would I be correct in
2 assuming that you would not be personally familiar with
3 all of the various research efforts undertaken to date
4 in this jurisdiction, that is in Ontario, with respect
5 to forestry related issues?

6 A. That is correct.

7 Q. Including, for example, such matters
8 as soil productivity?

9 A. That is correct.

10 Q. Mycorrhizal relationships?

11 A. That is correct.

12 Q. Potential for forest decline?

13 A. I have greater familiarity with some
14 of that.

15 Q. Ontario research?

16 A. Yes, because of the meeting I was at
17 last year.

18 Q. I'm sorry?

19 A. Because of the meeting I was at in
20 Ontario last year, and because I have heard some of the
21 Canadian scientists speaking in the States.

22 Q. You're referring now to the old
23 growth symposium held last year?

24 A. That is correct.

25 Q. That's the meeting you were at last

1 year?

2 A. Yes.

3 Q. All right.

4 A. One of the things, with respect
5 getting back to the mycorrhizal research, I do not know
6 what is being done here but I have kept up with the
7 literature pretty much on what is being done between
8 the mycorrhizal relationships in the soils, small
9 mammals and inoculation.

10 And there, from what I have seen, there
11 is very little being done, if anything, to any extent
12 in eastern Canada, it is only starting in the eastern
13 United States and they are finding the same type of
14 things we are.

15 Q. In fairness as I understand it
16 though, Mr. Maser, I identified specific Canadian
17 researchers to you--

18 A. That's what I'm saying.

19 Q. --in respect, you told me you're not
20 familiar with their work.

21 A. I'm not. What I'm saying is from the
22 literature which I do go through I have not seen
23 articles on that, I can remember the relationships
24 between mycorrhizal fungi and small mammals, the others
25 I do not pay attention to.

1 Q. I see. And just so that I'm clear,
2 prior to giving your evidence before the Board on those
3 issues did you undertake any particular literature
4 review to determine what research work had in fact been
5 done and published by scientists in Canada on those
6 issues?

7 A. No, because what I said was I'm not
8 speaking specifically about Ontario, so I did not look
9 to see what was done because there was no defence
10 intended. I did not intend to make any judgment about
11 what was happening in Ontario.

12 MS. CRONK: Thank you, sir.

13 THE WITNESS: It is 3:30.

14 MS. CRONK: Madam Chair, as Mr. Maser
15 kindly points out, I wonder if I could seek the Board's
16 indulgence now to stand down the rest of my
17 cross-examination and to be excused for the balance of
18 this afternoon's proceedings.

19 Mr. Cosman will be here on behalf of the
20 OFIA to address - Mr. Cosman is here - to address the
21 issues at four o'clock, and I understand Ms. Blastorah,
22 if it is your wish, is prepared to proceed now with her
23 cross-examination.

24 MADAM CHAIR: Yes, we do want Ms.
25 Blastorah to step up and begin her cross-examination.

1 MS. CRONK: Thank you, Madam Chair.
2 Thank you, Mr. Martel. Thank you, Mr. Maser. Until
3 tomorrow.

4 MS. BLASTORAH: It will just take me a
5 few minutes.

6 ---Short recess

7 MS. BLASTORAH: I would like to begin,
8 Mrs. Koven, by filing a number of interrogatories.
9 These are MNR's interrogatories in relation to FFT
10 witness statement No. 6 and they are Interrogatory Nos.
11 1, 4, 5, 6, 9 and 11. (handed)

12 MADAM CHAIR: That will be Exhibit 1683.
13 ---EXHIBIT NO. 1683: MNR Interrogatory Nos. 1, 4, 5,
14 6, 9 and 11 re: FFT Panel No. 6.

15 MS. BLASTORAH: And I should indicate at
16 the outset that we have substantially reduced our cross
17 based on the existing cross, and I should apologize for
18 Ms. Cronk, I had anticipated I would not have any
19 trouble filling this time, I'm not sure whether that
20 will be a problem or not, it will depend on the
21 answers, but I will probably have additional cross
22 arising out from what follows tomorrow.

23 MR. MARTEL: You're saying 25 minutes?

24 MS. BLASTORAH: Potentially, I'm just
25 saying at this point.

1 MR. MARTEL: You'll break our hearts.

2 MS. BLASTORAH: So I apologize to Ms.

3 Cronk, I hadn't realized that I would be in this
4 position.

5 MR. MARTEL: You don't have to apologize.

6 MS. BLASTORAH: I was just canvassing the
7 room to see who was here for the scoping. I thought
8 perhaps we could start that early to avoid losing any
9 time.

10 CROSS-EXAMINATION BY MS. BLASTORAH:

11 Q. Good afternoon, Mr. Maser.

12 A. Good afternoon.

13 Q. I would like to begin by referring to
14 the work by Jack Ward Thomas that you mentioned in your
15 direct evidence, and specifically you were referred by
16 Mr. Lindgren to Appendix 12 of that work titled:
17 Wildlife Habitats and Managed Forests.

18 And I'm afraid I have misplaced my copy
19 of the exhibit, so I don't have the exhibit number.
20 Perhaps Mr. Lindgren could help me.

21 MR. LINDGREN: It's Exhibit 1671.

22 MS. BLASTORAH: Q. 1671. I don't think
23 it's necessary to refer to that, I have a more general
24 question. But he did refer you to Appendix 12 of that
25 work, which I understood to be a versatility index?

1 A. Yes, Ma'am.

2 Q. And am I correct that that appendix
3 in the work that we've mentioned is based on an
4 evaluation of important habitats for reproduction and
5 feeding of the species included in that index?

6 A. That is correct.

7 Q. Now, the Ministry of Natural
8 Resources has produced in this hearing a report, and
9 that report is a part of Exhibit 416B pages 566 and
10 following, which is a paper by Mr. James Baker, and
11 that report categorizes the habitat preferences of
12 vertebrates in the area of the forest which is relevant
13 to this hearing, what we refer to as the area of the
14 undertaking.

15 And that indicates that the various
16 successional stages and plant communities of the major
17 forest regions in Ontario, the boreal forest and the
18 Great Lakes/St. Lawrence, in Ontario for the species
19 that are included, and that work was prepared and
20 indicates that it was prepared based on best available
21 information at the time it was prepared.

22 I think you indicated in your evidence
23 that it's your position that where one doesn't have
24 perfect data it's better to proceed on the basis of
25 what you have rather than waiting until you have

1 perfect data. Would you agree that that's a correct
2 characterization?

3 A. Yes. There is something to keep in
4 mind there though, we will never have perfect data, we
5 will never have all the data, we will always be
6 proceeding on imperfect data.

7 Q. And I think your words, if I am
8 correct, were that it's better to act too soon than too
9 late?

10 A. That is correct.

11 Q. Okay. Would you agree with me that
12 the kind of work -- that this would be the kind of
13 work, a report which contains that kind of information
14 on the various successional stages and plant
15 communities of the major forest regions, is the type of
16 work that is the background work for Appendix 12.

17 A. I don't know, Ma'am, because I
18 haven't seen it. We went through hundreds of
19 references.

20 Q. No, I'm just asking you, is that the
21 kind of information one would want in order to
22 prepare --

23 A. I don't know, because I haven't seen
24 it.

25 Q. Okay. Perhaps it would be simplest

1 if I gave you the document, I was hoping not to have to
2 get into it in any detail. I believe we have some
3 copies.

4 A. Just let me take a look at it and I
5 will see if I can say yes or no.

6 Q. Okay. I have some extra copies here
7 for the Board since I hadn't intended to refer to it.
8 (handed)

9 MADAM CHAIR: Thank you.

10 MS. BLASTORAH: Q. And specifically I
11 would refer you to the table at the back. I just
12 excerpted one page - oh, unfortunately the page number
13 is cut off - but I believe it's probably page 589.
14 It's one page of a table that deals with what is
15 categorized as life form 1, that would be species which
16 reproduce in water and feed in water.

17 A. Mm-hmm. What page is it?

18 Q. And you can see there that the kind
19 of information that is laid out--

20 A. Well, this is patterned after the
21 work that we did anyway.

22 Q. Yes.

23 A. Yes.

24 Q. And so you would agree that that's
25 the kind of thing, the type of thing Mr. Thomas was

1 doing in Appendix 12 here or at least the background to
2 what is done in Appendix 12?

3 A. This is the kind of thing we did,
4 yes.

5 Q. Now, the appendix that you referred
6 to and the work that you did with Mr. Jack Ward Thomas
7 in my understanding deals only with vertebrates; am I
8 correct in that?

9 A. That is correct, including fish.

10 Q. And I understood your evidence to be
11 that your involvement with that project was
12 approximately four years?

13 A. Four and a half.

14 Q. Four and a half?

15 A. Yes.

16 Q. And was that the full duration of the
17 project or was that only your involvement with it?

18 A. No. When he asked me to help them
19 they were bogged down because he was not an
20 ornithologist he had data on small mammals, they knew
21 nothing about riparian zones, edges, or any of the
22 rest, what they had was snags and cavity nesters and
23 big game and succession, that was it. I helped them
24 provide all the rest of it. I designed the rest of the
25 book and then collectively we put it together, and they

1 did the big game.

2 Q. So in fact the project was longer
3 than the four and a half years of your involvement?

4 A. No, it was about four and a half
5 years of my involvement.

6 Q. I'm sorry, I --

7 A. The project started about three
8 months before I got to the laboratory and he came to me
9 in frustration and says, can you help us with this, we
10 don't know how to fill in this last part, and that is
11 what we did.

12 And if I remember correctly, we started
13 in March, '75 and it was finally published in November
14 or December, '79, something like that.

15 Q. Okay. I was just trying to get a
16 sense of how long this project took?

17 A. A very long three days.

18 Q. Yes. Now, Mr. Lindgren took you to
19 Forests for Tomorrow's term and condition No. 27(iii)
20 and you indicated that you would support that term and
21 condition.

22 A. What number is this? Oh, I have it
23 here.

24 Q. Do you have it?

25 A. What was the number?

1 Q. It was No. 27(iii)?

2 A. 27(iii), okay. I would support what
3 now?

4 Q. Well, I believe - and correct me if
5 I'm wrong - that you indicated that you would support
6 the concept that it would be a good idea to prepare a
7 species vulnerability index; am I correct?

8 A. Yes, we found it very useful for
9 managers and decision-making.

10 Q. You found it useful in your context?

11 A. The managers found it useful in their
12 context. We prepared it for them.

13 Q. Now, if I could just turn to the
14 words of this term and condition, the words require
15 this to be done for -- well, first of all, to begin at
16 the beginning, it says:

17 "To assist in the identification of
18 species requiring special monitoring and
19 management. The MNR shall develop
20 and implement a program to correlate all
21 wildlife species with each successional
22 stage of plant communities within
23 Ontario."

24 And that would be the kind of work that
25 we've seen for vertebrates in the document that I've

1 shown you which is Exhibit 416B?

2 A. Yes.

3 Q. When Mr. Lindgren asked you this
4 question there was no discussion of what was meant by
5 wildlife; correct.

6 A. That is correct. And that was
7 about -- that's a very good point. If I may elaborate
8 for a moment.

9 We had a struggle with that because the
10 Game Commission which was part of this, to them
11 wildlife is what can be shot and eaten, and what we
12 were trying to get across is that we needed -- that's
13 why we put in vertebrate wildlife to get away from
14 Bambi and trout, because we need to look at the entire
15 system.

16 So what we did was look at vertebrate
17 wildlife which included all mammals, amphibians,
18 reptiles, birds and, to the extent we had the data,
19 fish.

20 Q. And am I correct that you did not
21 look at microorganisms, for example?

22 A. Nobody could do that today.

23 Q. Thank you. And so you would agree
24 that if the proposal were to do that, it would not be
25 possible?

1 A. Mm-hmm, very definite. Invertebrates
2 to some extent and very limited; microorganisms, we
3 can't even identify them to species in research.

4 Q. Do you have any comment in relation
5 to the ability to do that for plants?

6 A. Plants in what sense?

7 Q. To develop the same kind of habitat
8 vulnerability index?

9 A. Yes. It has been done in the United
10 States in the National Heritage Program for those
11 plants which are considered rare, endangered or special
12 interest.

13 Q. And it would be a much larger task to
14 do it for all plants across the landscape?

15 A. I'm not a botanist, Ma'am, I couldn't
16 answer that. I don't know how many species there are.

17 Q. Fair enough. Now, you indicated in
18 your evidence, again quite candidly, that you were not
19 an expert in moose management or in moose, as I
20 understood?

21 A. In anything.

22 Q. And not an expert in anything. You
23 do not have - and please correct me if I'm wrong - you
24 do not have any particular experience or working
25 knowledge or research background in relation to moose

1 specifically?

2 A. I know a moose and their droppings
3 and their tracks and that's the extent of it.

4 Q. Thank you. Now, if the Ministry of
5 Natural Resources manages for moose for reasons which
6 may be valid, and I would suggest you aren't in a
7 position to comment on the reasons for which they may
8 do that, but for some very valid and historical
9 reasons, if the Ministry of Natural Resources managed
10 for moose --

11 MR. LINDGREN: What is this?

12 MS. BLASTORAH: Q. --would you agree
13 you're not in a position to comment on the Ministry of
14 Natural Resources wildlife management program in
15 Ontario?

16 A. I'm not even interested in what they
17 do.

18 Q. Thank you. Would you agree that if
19 that is in fact what they're doing, that it would be
20 appropriate as a management agency to evaluate the
21 effects, to do some analysis, to evaluate the effects
22 on other wildlife species of managing for moose
23 habitat?

24 A. Well, let me put it another way. I
25 am not sure where you're going with this, but let me

1 bring up something which I think to help me clarify.

2 As I think we talked about yesterday,
3 there are two kinds of management; featured species and
4 species richness, and you're asking me about featured
5 species management.

6 And if I understand, you asked me in
7 essence if it's okay to manage for moose, if that is
8 the decision, the answer is yes; and you're asking me
9 if it would be a good idea to look at the impact on
10 other species, species other than moose of moose
11 management, if that were a decision, and again I would
12 say the answer is yes.

13 Q. Thank you. And would you agree that
14 a reasonable first step in doing that kind of analysis
15 of effects of managing for moose habitat would be to
16 use what information you have at hand about the habitat
17 and wildlife relationships, the type of information we
18 were looking at in Exhibit 416B to estimate at a broad
19 habitat level the possible effects of moose management
20 on those other wildlife species?

21 A. Yes. I would drop the moose and say,
22 habitat management for moose because if you're
23 manipulating habitat that is having the impact, not the
24 fact that there are moose running around out there.

25 Q. Yes, fair enough. And would you

1 agree that additional appropriate steps would be
2 looking at alternative habitat management strategies,
3 for instance, in other jurisdictions, and by that I
4 mean, for instance, the U.S. Forest Service?

5 A. Well, Ma'am, I don't know what you
6 mean by appropriate. It is not up to me to determine
7 what is appropriate. What I was trying to express is
8 what is wise ecologically. Appropriateness is your
9 jurisdiction, not mine.

10 Q. And that would be something that the
11 Ministry or any responsible management agency would
12 have to investigate and determine based on the context
13 within which they're working?

14 A. They wouldn't have to, they can
15 choose to; they frequently don't, in our country
16 anyway, in the United States.

17 Q. Thank you. Now, I would like to move
18 to a slightly different topic, that of forest
19 fragmentation.

20 You spoke yesterday, and I believe again
21 this morning with Ms. Cronk, briefly about -- or you
22 made some references to the cutting pattern that you
23 have in the U.S. or that you're familiar with and that
24 problems that you've had with resultant fragmentation
25 as a result of small cuts?

1 A. That is across the United States, we
2 figured out what was causing it in the Pacific
3 northwest.

4 Q. And if it were proposed that this
5 Board should impose a set of rules which would result
6 in a landscape pattern of many small cuts segregated by
7 small strips or patches of standing timber, am I
8 correct that that could result in the same kind of
9 fragmentation you are concerned about?

10 A. Yes, Ma'am.

11 Q. Now, I would like to turn briefly to
12 another question that Mr. Lindgren asked you, and this
13 is in relation to your concept of sustained yield and I
14 believe what you have called economic sustained yield
15 during your evidence.

16 A. Yes.

17 Q. In referring to that during your
18 evidence my notes indicated that you had equated your
19 concept of sustained yield or economic sustained yield
20 with sustained cut and even flow?

21 A. That is correct.

22 Q. And that's your understanding?

23 A. Sustained cut, even flow -- our
24 concept in the United States of non-declining even flow
25 was superimposed on top of the sustained yield; in

1 other words, it was not part -- when the law was
2 written it was not part of the concept. Sustained
3 yield meant you cut a certain volume and you keep it
4 going in perpetuity and as long as we had the timber
5 base we had sustained yield, and it was all old growth
6 just about.

7 We are running out of the cut, we are
8 therefore running out of yield yelled and so what they
9 do is ask for deviations in this; if we cut more now,
10 can we make it up by slowing down five years later, but
11 they never do because now they have to sustain the
12 other cut.

13 Q. So I just want to clarify then, I'm
14 not sure I understand the distinction that you're
15 making between even flow and sustained cut.

16 A. Even flow means that there is an even
17 predictable flow of wood fiber coming off Forest
18 Service lands, that is -- non-declining even flow is
19 the same as sustained yield, in my view. They gave it
20 a fancier term which was a little bit more palatable to
21 the public, but in ends up, in my opinion, being the
22 same thing.

23 Q. Would that be included in the concept
24 of economic sustained yield that you were talking about
25 in your evidence?

1 A. Yes, Ma'am.

2 Q. And would you agree with me that
3 during your evidence you indicated that it is possible,
4 within your concept of sustainable forestry, to take
5 timber off the lands to maintain an industry within
6 some limits, and I think your words were, sometimes you
7 can take more and sometimes you can take less?

8 A. That is correct.

9 Q. And am I correct that what you were
10 speaking of there would be limits that are set
11 basically on the basis of the hard and soft limits you
12 referred to in your flip charts which are Exhibit 1672?

13 A. Ma'am, that is an excellent question.
14 What I was referring to was, we inherited the land
15 base, we can cut it at a sustained base and unless we
16 can have trees growing at the same rate we are cutting,
17 which we don't - I don't know about you - we don't, and
18 I know they don't in British Columbia, then that is not
19 sustainable.

20 If and when you plant trees or you get
21 natural regeneration and those sites reach cutting age,
22 to the extent that you have more or less timber ready
23 at that point to balance what is being cut now, that is
24 when you increase or decrease; you do not cut more or
25 less based on what you have, that isn't what I was

1 getting at.

2 Sustainable means that you determine what
3 the carrying capacity of the land is and in some land
4 you can cut more, in the more fragile land probably
5 further north where it wouldn't grow as fast, you would
6 cut less. That's what I'm talking about.

7 Q. Okay. One of the reasons I wanted to
8 clarify with you your concept of sustained yield was
9 because Mr. Lindgren had referred you to the purpose of
10 the undertaking as stated -- of this undertaking as
11 stated in the Class Environmental Assessment Document,
12 and he indicated to you that that document states that
13 the practical meaning in Ontario of sustained yield is
14 continuity of harvest.

15 Did you understand continuity of harvest
16 in that context to include the concept of even flow as
17 we have just discussed it?

18 A. Sustained means even flow, and so I
19 took -- anything that has sustained I take to mean even
20 flow.

21 Q. And if -- I would like to read you a
22 passage from that and just--

23 A. Okay.

24 Q. --clarify whether this changes your
25 view of that at all. And this is on page 97 of the

1 Class Environmental Assessment Document, which is
2 Exhibit No. 4.

3 "Whether reckoned by years or by longer
4 periods, the purpose is to obtain a
5 sustained flow of products, a flow that
6 may be currently increased or diminished
7 in accordance with the purposes of
8 management and the condition of the
9 forest, but which may be continued
10 indefinitely even though often at
11 variable rates."

12 Would you agree with me that that
13 statement could be consistent with your concept of
14 sustainable forestry, depending on the limits that are
15 set?

16 A. The word in there was sustained
17 yield, if I heard it right, and that sets the tone for
18 that statement to me.

19 Q. So?

20 A. If it were sustainable yield, I would
21 agree.

22 Q. And so it's the words that you have
23 problems with; is that correct?

24 A. Sustained yield means something very
25 different than sustainable, and we do not use words by

1 accident.

2 Q. And when you use the words sustained
3 yield you are, as you've indicated, including in that
4 the concept of even flow?

5 A. That is what sustained means, yes.

6 Q. So you are reading into that
7 paragraph the concept of even flow?

8 A. That is correct.

9 Q. And it's on that basis that you are
10 indicating that you have problems with this statement?

11 A. I don't have problems with it, it's
12 not my purview to have problems. I do not think it's
13 biologically sustainable based on what I know, or what
14 I perceive.

15 Q. And if that paragraph read, using
16 your words, sustainable rather than sustained--

17 A. That would make all the difference,
18 yes, Ma'am.

19 Q. That would make all the difference?

20 MS. BLASTORAH: If I could just have a
21 moment, Ms. Koven, I think I may be finished.

22 Q. Just to finish off, Mr. Maser, I just
23 want to make sure I understand. Obviously, as you
24 indicated in your witness statement, it's important to
25 make sure we all are talking about the same thing.

1 A. That's true.

2 Q. Clearly am I correct that you haven't
3 read Davis 1966 which is -- do you have a copy of the
4 Class Environmental Assessment Document, I probably
5 should have --

6 A. No, Ma'am, I do not.

7 Q. Okay. Perhaps I'll just -- thank
8 you. The reference here is to a work entitled: Forest
9 Management Regulation and Valuation by Davis dated
10 1966. Are you familiar with that text?

11 A. One moment now. Where is this that
12 you're talking about?

13 Q. I'm sorry, it's on page 97.

14 A. Yes, Ma'am.

15 Q. The bottom left-hand, right at the
16 bottom of the page, is a quotation from that book, and
17 it indicates in the paragraph above.

18 A. Oh, okay.

19 Q. Are you familiar with that text?

20 A. No.

21 Q. Okay. So without the context of this
22 statement or an understanding of how Davis uses his
23 words, can I characterize what you've just indicated as
24 follows, and you tell me if you disagree.

25 A. As what?

1 Q. As follows. I am going to put
2 something, sorry.

3 A. Oh, as follows, okay.

4 Q. Am I correct that you are talking
5 about sustained yield and you are concerned with the
6 term sustained yield in that concept as you have
7 discussed it, is your understanding based on your
8 experience in the United States that sustained yield
9 includes the concept of even flow?

10 A. That is the way sustained yield is
11 defined, after the fact. Sustained, if you look in the
12 dictionary, means in essence the same thing. I don't
13 care who uses the word sustain or how they intend it to
14 be used, that was our problem.

15 The intent of Congress was sustainable
16 not sustain. They used sustain, it was then
17 interpreted that way and the economic pressures were
18 for sustained. So it became sustained.

19 In that sense, to me - and I may be a
20 little fussier because I'm an author - semantics are
21 very important because what we say is what we transfer
22 to the people, to each other, and that's why this is
23 such, like a marriage, is such a difficult thing trying
24 to get words straight.

25 Sustained has a very specific meaning and

1 I don't care how it is used, unless that is clearly
2 defined by the person doing the writing, I will take it
3 as I understand it and I will take it by dictionary
4 definition. That to me is the problem.

5 Q. And you not aware -- am I correct,
6 you're not aware of how MNR, the Ministry of Natural
7 Resources, may define that term?

8 A. That is correct.

9 Q. Not to quibble over words, I think
10 just -- am I correct that the concept you are concerned
11 about is the one you have explained which includes even
12 flow, and leaving aside the word sustained versus
13 sustainable, the concept that you do think is
14 consistent with what you have termed sustainable
15 forestry would include an Industry producing at some
16 level which varies over time consistent with the hard
17 and soft limits that you have discussed in your
18 evidence?

19 A. That is correct.

20 MS. BLASTORAH: Thank you. Those are my
21 questions at this time, Mrs. Koven, subject to
22 additional items which may arise from cross-examination
23 tomorrow.

24 MADAM CHAIR: All right. Thank you, Ms.
25 Blastorah.

1 Thank you, Mr. Maser.

2 THE WITNESS: It's been a pleasure.

3 MADAM CHAIR: We are going to start our
4 procedural discussion now, which isn't going to be
5 nearly as interesting as listening to Mr. Maser's
6 evidence.

7 Everyone is invited to stay if they want,
8 but Mr. Maser will be back at nine o'clock tomorrow
9 morning.

10 THE WITNESS: Yes, Ma'am. I am at your
11 mercy.

12 ---Witness withdraws

13 ---Discussion off the record

14 Procedural Session

15 MADAM CHAIR: All right. We're here this
16 evening, Mr. Freidin, to hear first of all from you.

17 The Board assumes you have kept the other
18 parties informed, we had no idea what you were doing
19 with respect to the terms and conditions business until
20 we got a fax from you at four o'clock yesterday
21 afternoon, but presumably the other parties were
22 apprised of what was going on and we're prepared to be
23 here this evening.

24 The Board has no intentions of deciding
25 whether or not to give you a request for an adjournment

1 until we've heard from all the parties. So we will
2 hear from those parties this evening who are here and
3 we will hear presumably in writing from other parties
4 who couldn't be here.

5 So why don't we begin with--

6 MR. FREIDIN: Well, Madam Chair, I don't
7 think -- I have provided copies of the correspondence
8 that you received yesterday to the other parties. I
9 think it's clear the relief that the Ministry is
10 seeking at this particular time, that the Ministry is
11 supported by the Ministry of the Environment in this
12 regard.

13 I think the letter, I am sure all the
14 parties and I assume the Board had an opportunity to
15 review Mr. Wildman's letter. I don't think it's
16 necessary for me to take the time to repeat really
17 what's in his letter.

18 That sets out the reason for the request
19 and it's on that basis that I seek the request, and I
20 think on that basis the other parties should be asked
21 to respond.

22 MADAM CHAIR: All right, Mr. Freidin,
23 perhaps the Board will put a few questions to you first
24 because it's not clear to us what you are requesting,
25 and then we will hear from all the other parties as

(Freidin)

1 well.

2 The first point we want clarified is with
3 respect to whether you're proposing something which
4 would change the EA. Are you proposing some new
5 information, something that will change what we have
6 before us with respect to the evidence that we've heard
7 so far and with respect to what you're asking approval
8 for?

9 MR. FREIDIN: It will not change the
10 definition of the undertaking, it will not change the
11 purpose of the undertaking, it will not change the sort
12 of relief that we are seeking.

13 As indicated, these initiatives will in
14 some cases be relevant to those issues when those
15 initiatives are developed to a certain point. We think
16 it's appropriate to discuss those with the parties in
17 the context of the matters which are before you now,
18 and there is a good chance, we hope, that these
19 initiatives when discussed in the context of what's
20 before you now will provide enough room to address some
21 of the concerns that the parties have and which they
22 have indicated to date perhaps have not been adequately
23 addressed.

24 MADAM CHAIR: So it's not in your
25 intention to discuss with the parties any new

(Freidin)

1 information that's not before the Board already?

2 MR. FREIDIN: I'm not too sure I
3 understand what you mean when you say new information
4 which is not before the Board.

5 MADAM CHAIR: Well, I guess the Board
6 doesn't understand what Mr. Wildman means by new reform
7 initiatives.

8 Is he talking about evidence we already
9 have in front of this hearing; in other words, you're
10 not going off to negotiate terms and conditions that
11 apply to the application before us on the basis of
12 information that the Board doesn't have before it or
13 the parties don't have before it?

14 MR. FREIDIN: Well, to the extent that
15 any of these developments are new and may have some
16 relationship to the issues which have been addressed by
17 the Board, they would indeed form part of the
18 discussions, they might very well result in agreed upon
19 terms and conditions - and that would not be an unusual
20 sort of thing to happen in the context of a hearing
21 like this.

22 What would happen in that situation is
23 that the Board would have to be advised by way of
24 agreed Statement of Facts or by way of evidence what in
25 fact formed the basis of the agreement. If something

(Freidin)

1 new formed the basis of that agreement that you hadn't
2 heard about, you would have to be advised of that
3 because it would be, in my respectful submission,
4 improper for you just to say because the parties agreed
5 you were going to adopt it, so...

6 MADAM CHAIR: Well, that's the problem,
7 Mr. Freidin. I think we've identified in this hearing
8 before that when a proponent is a moving target, when
9 the EA never ends, when we keep putting in new
10 information, by the time we make our decisions, do we
11 have in front of us the same application we started
12 with? When does it stop?

13 And we don't want anyone to get a foot in
14 the door with respect to reopening your case. We have
15 your evidence in front of us we don't want to start
16 another round of witness statements and
17 cross-examination.

18 MR. FREIDIN: It's not our hope that the
19 matters referred to in the letter would result in a
20 necessity to reopen our case, it is the hope that these
21 developments might allow the Ministry to better address
22 specific matters which have already been raised by the
23 parties and have in fact been included in their terms
24 and conditions.

25 MR. MARTEL: You're talking about a new

(Freidin)

1 direction that the Ministry itself might be deciding to
2 go on specific issues which, up until three months ago,
3 they weren't prepared to, let's say, maybe be as
4 flexible on as they might come as a result of some
5 change in direction based on a new government around?

6 MR. FREIDIN: I think that it would be
7 fair to say that that would be -- is part of what is
8 happening and what is being considered. If in fact --

9 MR. MARTEL: It gives you room to
10 manoeuvre then?

11 MR. FREIDIN: Well, that's right. Yeah.
12 Simply, yes.

13 MR. MARTEL: Yes, okay.

14 MADAM CHAIR: What do you mean manoeuvre,
15 Mr. Freidin? You mean that you could feel yourself
16 being in a better position to negotiate with the
17 parties to the hearing?

18 MR. FREIDIN: Yes. Let me put it this
19 way. The letter indicates that certain of these
20 initiatives will be relevant to the issues in the
21 hearing.

22 The Board has indicated that it wishes,
23 and I think all the parties wish, that any negotiations
24 be ones where commitments can be made, so that when you
25 negotiate you can say: Okay, we have got a deal or,

(Freidin)

1 you know, we have got a deal on 75 per cent of that.

2 The Ministry is indicating that because
3 certain of these initiatives will be relevant to the
4 issues in the hearing, those initiatives, once they get
5 developed to a certain stage, will in fact allow the
6 Ministry to sit down in the negotiation session and
7 deal with some of those issues, as you indicated Mr.
8 Martel, with some flexibility because we would be able
9 to say, yes, this is something we think we can make a
10 deal on.

11 MR. MARTEL: And I'm not saying this is
12 an example, but one might say clearcut, we might say:
13 Well, there are limits. I'm not saying that, I'm just
14 using that as a hypothetical example--

15 MR. FREIDIN: Sure.

16 MR. MARTEL: --based on the various
17 proposals that have put been forward by all the various
18 parties in their terms and conditions, and I'm not
19 saying that's the case at all, I'm just plucking a
20 hypothetical out.

21 MR. FREIDIN: As a hypothetical, you are
22 absolutely correct. If I had instructions that
23 resulted in initiatives that decides that clearcuts
24 should not exceed five hectares or should not exceed or
25 should not exceed a hundred hectares, whatever it was,

(Freidin)

1 that is obviously something that we would take to the
2 negotiation table and there would perhaps be a
3 different position than what has been put forward to
4 date.

5 MADAM CHAIR: A second concern of the
6 Board, Mr. Freidin, in trying to understand what this
7 communication means is whether we should revisit what
8 the original purpose of the negotiations was.

9 The negotiation process was not meant to
10 substitute for this hearing process nor for the Board
11 hearing the evidence and approving the application.
12 The reason we conceived the terms, negotiation process,
13 was so that we could give better direction to the
14 intervenors to formulate their cases; in other words,
15 the timeliness of the negotiations was of more
16 essential importance before the intervenors put in
17 their evidence, in the sense we wanted to identify
18 specifically what the issues in dispute were.

19 You seem to be taking the view that the
20 negotiations have a life of their own, and the Board is
21 going to have to hear from all the parties about how
22 you think this process will shorten the hearing, when
23 we're already through a lot of the evidence of the
24 largest intervenor and the time frame you're proposing
25 probably won't be of much assistance in helping to

(Freidin)

1 shorten the cases of the other intervenors.

2 MR. FREIDIN: Well, one of the purposes,
3 as I understood it, of the negotiations was a desire to
4 in fact shorten the hearings, as you have indicated,
5 and I'll think you will hear from other parties, about
6 whether -- you know, how this proposal will affect
7 people's ability to formulate their cases.

8 If in fact the negotiations took place
9 within the kinds of time frames that are being
10 suggested in this letter and if, as a result of these
11 initiatives, there was an ability to really make some
12 deals, come to some agreements on matters which have
13 been raised where perhaps now there is not that
14 flexibility, and if those negotiations resulted in an
15 agreement in whole or in part in relation to some of
16 those issues, then I think that would shorten the
17 hearing, notwithstanding the timing here is one which
18 in fact would be one where Forests for Tomorrow
19 obviously hopefully will be finished their case and we
20 would be commencing the case of one of the other
21 parties.

22 There is still -- I don't think the
23 timing of this would be one where we would not have
24 heard in full from the native groups, we will not have
25 heard from OFAH or NOTO, so there's still in my

(Freidin)

1 respectful submission the opportunity to, if
2 agreement -- substantial agreements are made on terms
3 and conditions, to save time.

4 MADAM CHAIR: Well, let's hear from the
5 other parties. Who wants to go first?

6 Mr. Cosman?

7 MR. COSMAN: Thank you, Madam Chair.

8 Madam Chair, we've actually received the
9 same letter that you did and the other parties did and
10 we have actually committed our position in respect to
11 this request into writing and I will file copies with
12 the Board and distribute it to the parties. (handed)

13 MADAM CHAIR: Thank you, Mr. Cosman.

14 MR. COSMAN: Madam Chair, the statement
15 is actually very short in describing what the position
16 of the Ontario Forest Industries Association is and
17 I'll just take the few minutes necessary to read it.

18 As I've indicated, we have received a
19 copy of the letter that you have referred to from the
20 Honourable Bud Wildman supported by the Honourable Ruth
21 Grier requesting an extension of the deadline for
22 submitting a proposal for negotiations to the last day
23 of March, 1991.

24 The request for an extension is to enable
25 the government to advise the Board and the parties of

(Cosman)

1 the content of a set of initiatives in a number of
2 areas which may impact upon the matters that the Board
3 must decide at the conclusion of this hearing.

4 On behalf of our client I am instructed
5 to advise the Board that we support the extension
6 requested by the Minister of Natural Resources together
7 with the Minister of the Environment in that the
8 framework, timing and outcome of the negotiations may
9 depend upon the initiatives proposed and like you and
10 like the other parties we don't know any more as to
11 what they are other than what is stated in the letter
12 that has been provided to us.

13 We also understand that the government
14 has committed to develop these initiatives through a
15 broad consultation process and our client looks forward
16 to meaningful participation in this consultation
17 process.

18 Our client considers that it has made
19 positive contributions to date to the Board and our
20 client looks forward to making further positive
21 contributions in the ongoing process of change.

22 It is important to underline that this
23 panel, the Environmental Assessment Board, has the duty
24 at the end of the day to make an independent decision
25 upon the proposal that is before them and to remember

(Cosman)

1 that the Minister of Natural Resources and the Minister
2 of the Environment are, along with the other parties,
3 equal parties before the Board in making submissions
4 and leading evidence in support of their respective
5 positions.

6 However, we view this intervention of the
7 Minister with this request for an extension as no
8 threat to the integrity and independence of the Board
9 in its decision-making.

10 Madam Chair, we would not support any
11 action that we considered undermined the authority of
12 this Board to make an independent decision at the end
13 of the day and no negotiation process will replace
14 that.

15 We reiterate our support for the
16 negotiation process itself and we will make further
17 submissions upon being advised of the positions
18 developed in the government initiatives that we are
19 advised are forthcoming.

20 Thank you, Madam Chair.

21 MADAM CHAIR: Thank you, Mr. Cosman.

22 Mr. Hunter?

23 MR. HUNTER: Good afternoon, Ms. Koven,
24 Mr. Martel.

25 I think that some of the comments that I

(Hunter)

1 will make will echo concerns that you raised, Ms.

2 Koven, in your exchange with Mr. Freidin and they will
3 reflect some of the comments in terms of principle of
4 Mr. Cosman.

5 My purpose here is clearly to assist the
6 Board to attempt to facilitate this hearing, to seek,
7 if possible, a reduction in time associated with the
8 conduct of this hearing and obviously to try to be as
9 efficient and effective as possible. Clearly we will
10 support any initiative to meet those objectives, but
11 clearly within the context that would not constitute
12 any prejudice to our client.

13 While we're prepared to enter into
14 negotiations and be supportive of that process, I'm
15 assuming that this hearing will continue, that evidence
16 will be presented before this Board, I'm assuming that
17 the Board will prepare a decision based upon the
18 evidence put before the Board and, therefore, to me the
19 question is: How does one incorporate whatever results
20 may flow from negotiations into that process.

21 And as Mr. Cosman has said, and I concur,
22 we feel strongly that the independence of this Board
23 ought to be not only there, but be seen to be there.

24 The comments that I made with respect to
25 this issue were based and were prepared early before we

(Hunter)

1 received Mr. Wildman's letter yesterday, and I must say
2 to you that in receipt of that letter I'm more
3 concerned about the negotiation process than I was
4 before, although I am hopeful that the Minister's
5 statement means that we will have a bona fide
6 negotiation process.

7 Let me express my views, if I might, on
8 the previous exercise that we went through and it was
9 in that context that I had cast my original comments
10 and, therefore, I was prepared and I still am, to a
11 large degree, appearing before you as an extremely
12 skeptical person.

13 While our previous discussions with the
14 Ministry over terms and conditions - and it was
15 somewhere in our foggy and distant past - were quite
16 pleasant, they were substantially unproductive. We sat
17 around, we discussed terms and conditions, it was
18 evident that in that process that we were not going to
19 arrive, if you like, at a tabula rasa of agreed upon
20 sensibility between the parties, and perhaps that was
21 expecting too much.

22 The process was productive in terms of
23 the objective that you identified, Ms. Koven, with
24 respect to forcing us to come to grips with exactly
25 what it is that we want to hope that this Board would

(Hunter)

1 grant to us as a result of our participation.

2 Those documents were prepared, we went
3 through that exercise, we did meet with the Ministry
4 but at the end of the day nothing was resolved and, as
5 I understand it, we have not met with the Ministry on
6 these issues for several months, and certainly in this
7 context there's no the basis to continue to meet with
8 them on those issues.

9 Based upon that experience, again I'm
10 reflecting my concerns about the negotiation process
11 absent Mr. Wildman's letter. It seems to me today, as
12 it was then when we addressed this issue, that the
13 Board has no hammer to compel the parties to negotiate,
14 negotiate in the sense of coming to some agreed upon
15 terms and conditions which might affect the hearing
16 process with respect to ensuring that certain portions
17 of evidence need not be lead and/or that certain
18 portions of every argument need not be led.

19 And so that while you have asked us to
20 look at the negotiatio proces and be prepared to engage
21 in conversation over that, I would ask the Board to
22 look at the negotiation process, to look at the Act,
23 and look at its own powers and determine how they
24 believe we can be compelled to negotiate in a
25 substantive way, because there is simply no point in

(Hunter)

1 attempting to go through the process that we previously
2 went through.

3 MR. MARTEL: Yes, but I'm sure you agree,
4 Mr. --

5 MR. HUNTER: I just won't do it, it's as
6 simple as that.

7 MR. MARTEL: But I'm sure you agree, Mr.
8 Hunter, that by placing a facilitator there that does
9 take you a large step towards where people have to
10 negotiate. They might refuse to, but wasn't the
11 problem the last time that there was no one directing
12 traffic, so to speak.

13 MR. HUNTER: No, I don't believe so, Mr.
14 Martel. I don't believe that that was the fundamental
15 issue.

16 MR. MARTEL: I'm saying that the was only
17 issue.

18 MR. HUNTER: And I don't feel that I want
19 to get involved in relitigating what happened in that
20 negotiation process, I don't think that's fair to the
21 parties, and I'm not going to get involved in it.

22 But if I might address that issue, I
23 don't think that having somebody there to conduct a
24 sensitivity session is going to be particularly
25 effective in these instances. I think that if a

(Hunter)

1 facilitator is to be effective, then obviously that
2 individual has to, he or she, has to have tremendous
3 skills to be able to manage paper, and that alone would
4 be worthy of the Nobel Prize.

5 But the authority that person would have
6 to have, I think, would have to be quite extraordinary,
7 and I think at a minimum that party would have to have
8 the ability to report to the Board and obviously to the
9 public with respect to the conduct of those
10 negotiations and as to whether they were serious and as
11 to whether or not there was any realistic opportunity
12 to effect some form of a negotiated agreement, if one
13 wanted to do that. And I think that somewhere, somehow
14 as between a hammer and a substantial form of public
15 embarrassment, the parties have to be compelled to
16 negotiate.

17 I think it's also clear that if we were
18 going to do that, then we would certainly want to do it
19 before we present our case. And, again, there are two
20 reasons for that: One is just simple capability to
21 function with respect to the hearing on one hand; and
22 on the other hand, I think it's important again that
23 this Board have some form of threat that imposes itself
24 on the parties to negotiate. And the only thing I can
25 think of is that in fact the hearing would be suspended

(Hunter)

1 or adjourned until such time as there was something
2 before you that represented a negotiated agreement
3 and/or something was presented before you by a third
4 party facilitator or arbitrator which clearly
5 delineated the issues that were outstanding and an
6 appropriate process to deal with these issues, or
7 simply said: I'm sorry, I can't help you, and get on
8 with the hearing.

9 MADAM CHAIR: How long do you think a
10 negotiation process would take, Mr. Hunter, two weeks,
11 two months?

12 MR. HUNTER: I don't know. I think from
13 our perspective - and again at this point I can only
14 speak to my client's concerns - our terms and
15 conditions have been presented, our terms and
16 conditions deal principally, although not exclusively,
17 with issues of process and decision-making and we're
18 asking that they be applied on the specific part of the
19 province, and they deal primarily with the collection
20 of information, the packaging of information and the
21 decision-making associated.

22 From my perspective we think our
23 proposals are relatively straightforward and modest,
24 and the Ministry can say yes or no. It could be over
25 today, from our perspective. With respect to the

(Hunter)

1 Industry and with respect to Ms. Swenarchuk's clients
2 and others, I can't respond to that because their cases
3 are far more technical than ours.

4 MADAM CHAIR: Excuse me. Mr. Hunter,
5 what would your client do in the event there were some
6 sort of negotiations and the MNR agreed to all your
7 proposed terms and conditions?

8 MR. HUNTER: Well, lest we assumed that
9 all of the other parties in their wisdom, kindness
10 agreed with that, then we would be history, and I would
11 presume that MNR would incorporate those terms and
12 conditions into their Class Assessment in terms of the
13 terms and conditions that they have presented and they
14 would say to the Board that these are the terms and
15 conditions which we have accepted, we have incorporated
16 them into the Class Assessment and we seek your
17 approval for such, and in the absence of any
18 disagreement from any of the parties, it would fly.

19 MADAM CHAIR: So you would not present
20 your evidence before the Board, you would not make any
21 sort of case?

22 MR. HUNTER: Well, I want to be careful,
23 but assuming that MNR agreed, assuming that the other
24 parties agreed, then I think we would probably absent
25 the hearing. There would be no point. I think there's

(Hunter)

1 an educative value for the Board to hear from the
2 native community with respect to these issues and I
3 would be torn, because I think that that value is
4 important in and of itself and over and beyond the
5 specifics of the terms and conditions which we have
6 presented to you.

7 But I think that efficiency and mental
8 health would probably prevail and I would suggest to my
9 client that we not participate. You would have been in
10 the possession of the witness statement, you would have
11 read them, and I would trust that in terms of our
12 attempt to prevail on you to attend to the native
13 concerns.

14 So I think in those circumstances - Mr.
15 Cheechoo is here, so he can correct me if I'm wrong - I
16 would be tempted to put that before my client and
17 before the Board.

18 So from that perspective, our
19 participation would either cease and/or would be very
20 minimal. I suppose I would want to be around when
21 those terms and conditions were presented as part of
22 MNR's position to the Board and I would want to be
23 around to ensure that there were agreement to such
24 before the Board.

25 So as I say, from our perspective

(Hunter)

1 we either -- we can deal with our issues in one hour or
2 not at all, because our decisions go strictly --
3 principally to decision-making issues and proposals to
4 deal with those issues in terms of the participation of
5 native people in timber management activities.

6 MR. MARTEL: Could I ask about the
7 negotiation process then, because my colleague's
8 worried about the length of time.

9 Do we start -- would you suggest we start
10 with a time frame and if things were in fact
11 progressing that we expand that time frame and defer
12 any hearings as long as that --

13 MR. HUNTER: I think -- no, I
14 personally - and again I want to be cautious in my
15 comments - I have to say to this Board, based upon my
16 experiences in this province dealing with these issues,
17 that there must be a very harsh time line.

18 MR. MARTEL: I don't mean ad infinitum,
19 Mr. Hunter, I'm simply saying -- the last time we said,
20 I think was two weeks or something like that, but let's
21 say progress were being made, and substantial progress
22 were being made in the first two weeks.

23 MR. HUNTER: Yes.

24 MR. MARTEL: One should leave enough
25 flexibility to say: Okay, we go over into a third, we

(Hunter)

1 cannot cut off negotiations right at the highest point.

2 MR. HUNTER: Well, I suppose one has to
3 assume there is always hope but, again, I remain truly
4 skeptical and it would be less than candid if I
5 suggested that by finding another week here and another
6 week here and the another week there that one will be
7 successful.

8 That's my opinion, sir. I would suggest
9 a very hard time line and have to live with that.
10 There are others who have other views on that subject.

11 Mrs. Koven, you touched upon a very
12 important issue - and I won't belabour it - and it
13 really goes to a question of perception and I'm
14 gratified to have heard your comments that you are
15 aware of fact that we are now approaching that portion
16 of the hearing which will deal with native concerns,
17 public concerns - that's not to suggest that Ms.
18 Swenarchuk's concerns are not in the public domain,
19 they are very much - however, the nature of our
20 concerns have a much different human face to them.

21 And I must say that the tinge of
22 skepticism that I had - and this by the way was
23 reinforced when I saw Mr. Wildman's letter and I don't
24 think it was intentional, I don't believe it was
25 intentional - but nonetheless, why is it that there is

(Hunter)

1 this tremendous emphasis upon dealing with the
2 effectiveness or efficiency of the hearing just at that
3 point in time when those interests are to be before the
4 Board.

5 And again, it's a balancing act and I
6 have tried to address that as candidly as I can, and
7 I'm gratified to hear that the Board is aware of it and
8 sensitive to those issues. I don't think that one can
9 just simply suggest because of Mr. Wildman's letter
10 that there will be a negotiation process, that would be
11 implanted that would supplant this hearing. I don't
12 think it could be done in any event.

13 But let me leave you with a couple of
14 concerns, and the principle one that I have is the
15 mechanics of how does this Board pursuant to its
16 jurisdiction integrate into its decision-making
17 process. In terms of reviewing the evidence, and
18 rendering its decision. How do you incorporate into
19 that process the results of a negotiation process.

20 And I don't know how you do that, that's
21 something that I'm going to expend hopefully some time
22 thinking about over the course of the next month and
23 I'm sure that the Board will and I'm sure that counsel
24 will as well. I'll say no more on that.

25 You have asked me about NAN's position

(Hunter)

1 and I was going to in fact address that concern, the
2 concern being that from our perspective we think that
3 there's -- we think, given the nature of our terms and
4 conditions, that we should and could be able to effect
5 reasonable negotiation with the Ministry. As I say
6 before, I said before, it's either over in one minute
7 or it's never going to be resolved and it will have to
8 be dealt with by the Board. It's not black or white,
9 it's not yes or no, but the essential principles are
10 pretty clear and if the Ministry can live with those
11 principles, then it becomes principally a mechanical
12 exercise and presumably one can get on with life.

13 If I might deal with Mr. Wildman's
14 statement just for a moment. And again, as I mentioned
15 at the outset of my comments, that this letter caused
16 me more concern or causes me concern and that arises
17 because there is absolutely no mention in that letter,
18 there is no mention of the native communities and there
19 is no mention of the issues which we obviously would
20 want to address in any negotiation process.

21 The focus of that letter is, I think,
22 entirely on the issue of sustainable development, a
23 vague if not interesting concept but, nonetheless, my
24 clear impression and, at this time, my belief with
25 respect to how the Ministry wants to proceed is

(Hunter)

1 principally in the technical area.

2 So I see little room in the proposal as
3 of today and as enunciated by Mr. Wildman which would
4 deal with my client's concerns. I'm surprised and I
5 have to tell you I'm saddened that these matters were
6 not put forward. They may be at some future point in
7 time but, nonetheless, it's certainly a matter of
8 public perception. I have to say that it causes me
9 concern.

10 So in conclusion, we are obviously
11 prepared to assist this Board in whatever way it is
12 possible and reasonable, we are prepared to advance the
13 course of this hearing in any way that is reasonable,
14 and I think those are the extent of my comments.

15 MADAM CHAIR: Thank you, Mr. Hunter.

16 MR. HUNTER: And reluctantly I might add
17 I support the -- actually no, I don't. When it comes
18 right down to it, no, damn it, I don't support the
19 Ministry's position, but it doesn't really matter.

20 MADAM CHAIR: Who wishes to follow Mr.
21 Hunter. Mr. Colborne?

22 MR. COLBORNE: Yes, Madam Chairman and
23 Mr. Martel. I want to outline briefly the experience
24 of my client with negotiations before telling you what
25 my position is, although as I rise I know what it is.

(Colborne)

1 There were to be these negotiations in
2 February/March of 1990, as you know, and I came before
3 you once in May or so and told you that the very day
4 that the topic that my clients wanted to negotiate was
5 to begin I received a telephone call from the Ministry
6 of Natural Resources saying: Oh, by the way, our
7 instructions are we can't negotiate with you.

8 So the first negotiating session was a
9 total washout, waste of time, waste of money and it
10 came to late even to cancel my airline tickets.

11 Now, I mention that partly -- well, yeah,
12 we have an agreement that negotiations are without
13 prejudice, my whole position is there haven't been any
14 yet, and anything that was said at the negotiating
15 table won't be repeated here by me, but the shenanigans
16 before and after coming to a negotiating table, I
17 think, are not privileged in any way by any agreement.

18 And I mention that because we have been
19 blind sided again. Yesterday afternoon I get a phone
20 call from the Minister's office saying there's
21 wonderful thing coming, don't finalize your position
22 before the Board tomorrow and then, of course, what
23 appeared off the fax machine was Mr. Wildman's letter.

24 The negotiations of February/March, 1990
25 weren't negotiations for us because we were told that

(Colborne)

1 there was no authority to negotiate. So I came before
2 this Board prepared to ask for an order, and you may
3 recall that Mr. Freidin and his assistants busily got
4 on the phone to Toronto and came back and said: Well,
5 now we will negotiate. But there was one meeting, I
6 don't characterize it as negotiations, I'm not going to
7 try to tell you what happened there, there was one
8 meeting.

9 I thought that Mr. Reid was going to be
10 here for OMAA because he has something else to say on
11 that topic. I don't see him here, but I won't expand
12 on the topic, although I think if he were rising today
13 he would be referring you to a letter that he has sent
14 to Mr. Freidin. I have a copy of it, I think that a
15 copy has been filed with the Board, basically saying
16 that the topic that he's concerned with, which is very
17 similar to the one I'm concerned with, still hasn't
18 been negotiated either.

19 MADAM CHAIR: Excuse me, Mr. Colborne.
20 Is that the letter in which Mr. Reid refers to the need
21 for funding to enable him to participate in the
22 negotiations?

23 MR. COLBORNE: It was a short letter,
24 that may have been. Yes, that is the letter. It's
25 dated December 20th, 1990. I was speaking out of

(Colborne)

1 memory, Madam Chairman, and I thought that it was a
2 letter to Mr. Freidin as I just said. In fact I'm
3 wrong, it was a letter addressed to yourself.

4 In any case, the position that I have to
5 take is, despite the efforts of the Board to promote
6 and encourage the idea of negotiations, none have
7 actually occurred that have to do with the topic that
8 is of concern to my clients and that topic, as you
9 know, is the topic of allocation and, related to that,
10 the topic of treaty and aboriginal land rights.

11 Now, when I received a copy of the
12 Minister's letter I went and obtained up-to-date
13 instructions, in fact last night at Dryden. I had
14 arranged for the trip before I actually read the
15 letter, I think possibly a phone call could have
16 sufficed because the letter didn't live up to its
17 advanced billing.

18 But in any case, I did receive my
19 instructions last night. My clients did look at it,
20 they read the first page, the second page, and then
21 they said: Is there a third page to this, where does
22 it address our concerns. And I said it doesn't, there
23 is nothing there, absolutely nothing about allocation
24 and about treaty and aboriginal land rights.

25 So my instructions were to come here

(Colborne)

1 before you and persevere. From the beginning of this
2 hearing Grand Council Treaty No. 3 from its very
3 opening statement made by area tribal Chief George
4 Kakaway said: We're here to talk about allocation, we
5 want a slice of the pie and we're here to talk about
6 treaty and aboriginal land rights that have been
7 ignored for a hundred and some years, and that is what
8 I've been told to do, to stand up here and persevere.
9 Two years later I'm still standing up here.

10 Mr. Freidin was bringing motions to try
11 to tell you that that was not within your jurisdiction.
12 The enormously frustrating thing about that is that
13 even Mr. Wildman seems to have been briefed on these
14 matters, such that his letter seems to imply that he
15 even all these months, perhaps years after the matter
16 had been thrashed before the Board again and again
17 still doesn't think that those topics are before this
18 Board, and I'm referring to the second full paragraph
19 on the second page of the letter where Mr. Wildman
20 says:

21 "The current EA process and in particular
22 the negotiations will address the timber
23 component of the sustainable forestry
24 policy."

25 Isn't that what we debated in Thunder Bay

(Colborne)

1 for hours, if not days, and then here and in at least
2 one formal motion and numerous informal submissions and
3 applications, and it appears to me that Mr. Wildman in
4 his letter, I'm sure completely inadvertently, is yet
5 again trying to tell this Board what its jurisdiction
6 is, that this Board is not going to be dealing with the
7 embarrassing hard issues, we're just going to deal with
8 how big the trees should be or whatever, the technical
9 questions. Very important questions but, nevertheless,
10 only the technical questions.

11 Now, with respect Mr. Wildman,
12 intentionally or not, can't tell this Board what its
13 jurisdiction is. I've been told to come here and say
14 that I represent the indian forest dwellers in the
15 Treaty 3 area and they intend to be here addressing the
16 impact of forestry generally on their human
17 communities. That's what they're here for. There is
18 nothing in Mr. Wildman's letter that refers to that at
19 all.

20 The perhaps most frustrating irony in all
21 of this is that the draft terms and conditions that my
22 client has proposed almost 12 months ago now are merely
23 that the Ministry of Natural Resources finally
24 negotiate, but we don't say just negotiate because
25 negotiation is a word that is apparently infinitely

(Colborne)

1 intrenchable. Some people might define negotiation as
2 merely sending out a junior civil servant to sit and
3 listen, and that very often is what the Province of
4 Ontario has defined as negotiations.

5 We are asking for forced negotiations and
6 we're asking for bona fide negotiations, that means
7 high level and that means respectful negotiations, and
8 my clients don't think that they can get those except
9 via an order.

10 My clients also think that they have a
11 right to that, according to the Supreme Court of Canada
12 in the Sparrow case, the relationship between the Crown
13 and native people is supposed to be trust-like, it's
14 not supposed to be adversarial, matters in dispute are
15 supposed to be resolved by bona fide, good faith,
16 respectful discussion, they're not supposed to be
17 thrashed out, they're not supposed to be conducted in a
18 manner that gives rise to unhealthy relationships and
19 that, unfortunately, seems to have been the pattern in
20 the past.

21 And that is why my request and my
22 position is that there be a direction, and Mr. Hunter
23 suggested that there may be a question as to where the
24 authority to make such a direction would be. I'll
25 submit to you that the authority is very clear in

1 Section 23(1) of the Statutory Powers Procedure Act.

2 This says:

3 "A tribunal may make such orders or give
4 such directions in proceedings before it
5 as it considers proper to prevent abuse
6 of its processes."

7 This hearing has been going on for so
8 long and there has been such an utter failure to reduce
9 issues and to directly address areas of concern,
10 certainly the ones that my client keeps raising, that I
11 think we are within the sphere of the process being
12 abused.

13 I think that this tribunal has said to
14 the proponent time and again that the impact of
15 allocation on Indian communities in the north is one
16 that ought to be addressed. On the other hand, the
17 proponent has failed completely to enter into any
18 negotiations on that topic, and even now the Minister
19 speaking for the proponent has released an announcement
20 of his no doubt good intentions which still excludes
21 that topic.

22 Therefore, I think it is very much within
23 the power of this Board to tell the proponent that the
24 negotiations on that topic with my clients must begin
25 and there is no reason why they can't begin now.

(Colborne)

1 The proponent is asking for a two and a
2 half month adjournment to develop presumably or
3 complete the development of policy and...

4 MADAM CHAIR: Excuse me, Mr. Colborne.
5 It's not our understanding that the proponent is asking
6 for an adjournment of the hearing.

7 MR. COLBORNE: No, no, I understand that,
8 an adjournment of the deadline really for presentation
9 of a negotiating plan.

10 But within that two and a half months, if
11 there could actually be the commencement of these
12 negotiations, there's a lot that can be -- there's a
13 lot of progress that could be made that doesn't require
14 finalization of the policy considerations that are
15 referred to in the Minister's letter; information can
16 be collected, and certainly I would suggest the first
17 item on any negotiating agenda could be why allocation
18 and native land and resource rights doesn't even seem
19 to be on the Minister's policy review agenda.

20 So my position on the application is that
21 we oppose it to the extent that it affects the topics
22 being raised by my client; to the extent that it
23 affects other topics, it may be very reasonable for
24 there to be an adjournment in the timing of the
25 negotiations.

(Colborne)

1 To the extent it affects the topics that
2 have been raised, allocation and native lands and
3 resource rights, it makes no sense at all, I oppose it.
4 And not only that, I go further and I'm asking for a
5 direction under Section 23 of the Statutory Powers
6 Procedure Act to the proponent to commence those
7 negotiations and then when the entire negotiation
8 package comes back, let's say it's in two and a half
9 months - if you would accept the proponent's
10 suggestion - they cannot only tell you what is in the
11 new negotiating package, but then they can stand up and
12 tell you if they have made any progress with getting
13 these vital issues on their agenda and you can have
14 something before you that you can assess, not just me
15 standing up and saying they won't negotiate, you can
16 have an actual report of whether progress has been made
17 or not.

18 That's my request. Those are my
19 submissions. Thank you, Ms. Koven.

20 MADAM CHAIR: Thank you, Mr. Colborne.

21 MR. HUNTER: Mrs. Koven, if I might, I
22 would like to just -- sort of in the middle of the
23 issue about agreeing to the adjournment, I would like
24 to wait, I presume Mr. Campbell is going to address
25 this issue, if I might put off on my comments until

(Colborne)

1 he's finished.

2 MADAM CHAIR: All right, Mr. Hunter.

3 Mr. Hanna?

4 MR. HANNA: Thank you, Madam Chair.

5 Good afternoon, Madam Chair, Mr. Martel.

6 Madam Chair, I have prepared a written
7 submission which I would like to circulate to the
8 parties and I'll provide copies now. (handed)

9 MADAM CHAIR: Thank you, Mr. Hanna.

10 Excuse me, Mr. Hanna. We have been
11 working straight for over two hours now, I think we are
12 going to have to take a short break.

13 MR. HANNA: Certainly.

14 MADAM CHAIR: Could we have 10 minutes.

15 ---Recess at 4:50 p.m.

16 ---On resuming at 5:05 p.m.

17 MADAM CHAIR: Mr. Hanna?

18 MR. HANNA: Madam Chair, before I begin
19 with the material I provided to you, I would like to
20 make some comments on some of the comments that have
21 been made this evening and also perhaps to provide you
22 with a response to the letter that has been discussed
23 at this meeting with respect to the adjournment of
24 negotiation sessions.

25 First of all, perhaps just on a different

(Hanna)

1 level, just to make sure that the Board understands
2 that from the OFAH position that we don't see the
3 negotiation process, whether it's immediate or at some
4 distant time as the Ministry is recommending,
5 necessarily limiting our ability to put our case
6 together.

7 We are prepared to put our case together
8 at the present time, the only thing that is limiting
9 our ability to put our case together, as I have
10 indicated to the Board in the past, is funds and as
11 soon as that is resolved I think that, as far as the
12 evidence that we would present, we would put the
13 witness statements together regardless of the outcome
14 of the negotiation session.

15 We might, as I believe Mr. Hunter has
16 indicated, decline to call the evidence, we might
17 present the witness statement to you simply to stand on
18 its own value and put it in in that sense, but we might
19 decline to call the evidence if there was agreement on
20 the specific term and condition that the witness
21 statement is intended to respond to.

22 In terms of the proposal that we have
23 brought forward in writing and submitted to you, I
24 would just like to indicate to you that we understood
25 that the design of negotiation process was not only to

(Hanna)

1 assist the intervenors in developing their case and
2 focus their evidence, but it was also designed to
3 shorten the hearing. That was our understanding, we
4 may have misunderstood the Board's intentions, but that
5 was our understanding, and that is the basis upon which
6 the submission I have submitted to you this evening was
7 prepared, on the basis of attempting to develop a
8 process that would shorten the overall hearing in terms
9 of evidence that need to be called and the
10 cross-examination of evidence that was called.

11 I would like to machines one thing with
12 respect to Mr. Cosman's handout and, that is, that when
13 I get into the details of our process that we've set
14 out, I do not see that we need to necessarily set off
15 the negotiation process until the Ministry's
16 initiatives are announced at the end of March.

17 I think there are things, even if the
18 Board decides that they wish to support or to agree to
19 the Ministry's request for an adjournment, there are
20 still things that can be done in the intervening time,
21 and when you get into the details of the proccess that
22 we've put forward I think you'll see that there are
23 things that can be done despite the adjournment being
24 granted, if that comes to be.

25 I would like to respond to one thing that

(Hanna)

1 Mr. Hunter spoke to Mr. Martel about, and that was that
2 the facilitator -- the absence of the facilitator was
3 not the problem. There were a number of problems with
4 the negotiation session. It was certainly the opinion
5 of my client that one of the reasons the negotiation
6 session was not as successful as it might have been was
7 the absence of the facilitator and you'll see in the
8 process that we've set forward that a facilitator is
9 proposed.

10 I would like now to move to the
11 submission itself. I'm not planning on reading the
12 whole thing into the record, it's there and I presume
13 that the Board will and the other parties will read it
14 at their leisure. I would just like to highlight some
15 of the points that are contained in it.

16 I have attempted to respond to the
17 direction that the Board set out on December 10th, I've
18 identified five matters that I felt that we should
19 respond to.

20 The first is the negotiation process, the
21 second is the matter of a schedule, the third deals
22 with the need for a facilitator and the negotiating
23 procedures themselves, the fourth is the negotiating
24 team, that I believe the Board requested who the
25 negotiating team would be, and the final section deals

(Hanna)

1 with the procedure that we would anticipate to receive
2 final authorization and acceptance of the negotiated
3 terms and conditions if such evolves out of the
4 negotiation process.

5 The first section of the submission deals
6 with the negotiation process. The negotiation process
7 has to deal with two issues, it has to deal with the
8 issue of what I will call fundamental conceptual
9 premises upon which the planning process has been put
10 forward. I would suggest to you that the OFAH planning
11 process is based upon a different conception of timber
12 management planning than perhaps the Ministry of
13 Natural Resources planning process, and that that is a
14 pervasive issue that overrides the entire terms and
15 conditions.

16 There are, however, other parts that are
17 simply what I'll call wording changes, minor changes in
18 terms of terms and conditions. Some issues are of less
19 far-reaching consequences than others, and that each of
20 those have to be recognized in the negotiation process.

21 I'll give you an example. One of the
22 concerns that my client has is that if you go through
23 the negotiating process and you mix and match from a
24 variety of different terms and conditions, that may in
25 fact prejudice the overall conceptual premise upon

(Hanna)

1 which the planning system has been set upon, and that
2 that has to be recognized in the negotiating process
3 and that that has to be something that the facilitator
4 is sensitive to through the negotiating process.

5 There is a six-step process in terms of
6 negotiations that has been set out. The first step
7 would be the requirements of the parties. It would
8 require each of the parties to examine the terms and
9 conditions of each of the other parties and to prepare
10 a written submission that would be similar to what we
11 have in terms of statements of issues.

12 Basically what you would have is four
13 categories in which you could respond in terms of other
14 parties' statement of issues: the first would be that
15 you're in agreement; the second would be that you're in
16 disagreement but you have an alternative proposal from
17 your terms and conditions to deal with that issue; the
18 third would be you're in disagreement, you don't feel
19 this is an appropriate issue to be dealt with either
20 through terms and conditions or any other way through
21 the hearing; and the final would be that you're
22 basically silent upon the issue, that you haven't a
23 position one way or the other, you're neutral on the
24 particular term and condition. Once that analysis has
25 been prepared by each of the parties it would

(Hanna)

1 circulated to all of the other parties for their
2 information.

3 The second step would then be the
4 facilitator examine the responses, the written
5 responses prepared by each of the parties and identify
6 those issues that are in dispute, then the facilitator
7 would have the responsibility of approaching the party
8 individually and, through discussions with the party,
9 determining whether or not there was room for
10 negotiation.

11 If the party basically said: Look, that
12 is our bottom line, we aren't moving from that, take it
13 or leave it proposition, then clearly there is no need
14 for negotiation and the facilitator would make that
15 determination and it would not be put on the agenda for
16 negotiation.

17 If the party says: Look, this is
18 something we're willing to discuss and perhaps to move
19 on, then it would possibly be put on the agenda for
20 negotiation.

21 The step 3 is basically an open
22 negotiation process. I think all of the parties have
23 indicated to you that in order for the negotiation
24 sessions to be effective there has to be negotiation in
25 the true sense of the word, that the parties have to

(Hanna)

1 come forward in good faith, they have to come forward
2 with sufficient executive power that decisions and
3 compromises can be made and that critical issues are
4 not deferred to some other forum, they have to be dealt
5 with at the negotiation session itself.

6 The facilitator in step 4 would be
7 responsible for preparing draft wording of those terms
8 and conditions for which there was agreement by some
9 portion of the parties. In the last negotiation
10 session the Board - I believe it was set out in the
11 original direction or the agreement that the parties
12 reached - that only those matters upon which there was
13 unanimous agreement would it come back to the Board for
14 their information. We saw that as a major block in
15 terms of the negotiation process. There were some
16 issues that I believe that there could have been
17 agreement, at least with some of the parties but,
18 unfortunately, that was -- we were prevented from
19 bringing that forward to the Board because of the
20 agreement that had been made.

21 We see that there is advantage, where
22 there is agreement among parties, to bring that forward
23 to the Board and to identify: These parties are in
24 agreement on these particular issues, other parties
25 aren't, and they will pursue that through the normal

(Hanna)

1 course of the hearing. But we are strongly of the
2 opinion that unanimous agreement should not be a
3 prerequisite for the information being brought back to
4 the Board in terms of the negotiation process.

5 Step 5 would be a final in the
6 negotiation process. The purposes of that would be the
7 facilitator would have developed a draft wording of the
8 terms and conditions, they would then be brought to a
9 final negotiation session to basically dot the i's and
10 cross the t's.

11 At that time, at that session, the
12 parties would actually formally endorse any negotiated
13 terms and conditions that they have been in agreement
14 with. There may well be parties that in the open
15 session have said we will not agree to that and,
16 therefore, they would not be asked to sign for those
17 final terms and conditions, only those parties that
18 were in agreement with signing the final terms and
19 conditions.

20 The step 6 is something that I had
21 contemplated as a result of Mr. Colborne's comments
22 and, that is, that the facilitator would present a
23 report to the Board. The facilitator would come
24 forward and say: Here are the terms and conditions we
25 have agreed on, or at least certain parties have agreed

(Hanna)

1 upon, it would be entered as basically an exhibit
2 before the hearing, part of the evidence.

3 As part of that the facilitator would
4 indicate the reasons that the parties had provided -
5 that are in agreement - for support of that term and
6 condition, somewhat in the same vein I think as Mr.
7 Hunter indicated, there needs to be some -- there has
8 to be some evidence given to the Board to persuade the
9 Board.

10 The Board can't just simply say: Well,
11 the parties agreed to it and, therefore, decide on that
12 basis. There has to be some informatin provided to the
13 Board to provide the Board with the basis to accept the
14 term and condition, if you so decide at the end of the
15 day.

16 One of the difficulties I see there is
17 how actually to deal with the facilitator's report in
18 terms of evidence, and one of the proposals that I
19 could see dealing with is actually having the
20 facilitator open to cross-examination. That this is --
21 here's what took place, here's the basis upon which I
22 developed the report, and then he would basically be
23 the venue whereby that information, the negotiation
24 session would be brought forward to the Board.

25 In terms of a schedule, that's contained

(Hanna)

1 on page 4. At this time we see that it could be done
2 in two months, but that's somewhat optimistic. I
3 recognize that it may require more time than that, but
4 I believe that - I think as Mr. Martel was suggesting -
5 I don't disagree with what Mr. Hunter said that it
6 would have to be by a fairly strict schedule, but by
7 the same token I think there has to be some
8 flexibility.

9 What we have indicated in the proposal is
10 that after step 2 where the facilitator has received
11 the review of the different terms and conditions by the
12 different parties and he's had his discussions with the
13 parties in terms of their submitted analysis, he at
14 that point could say: Look, this is not going to be a
15 productive process, there doesn't seem to be many
16 grounds for agreement, and at that point basically move
17 to directly what we have called step 6 and submit a
18 report and say, basically we couldn't come to
19 agreement, that the parties were fairly wide apart on
20 virtually all of the issues and the negotiation process
21 not going to be fruitful.

22 The other point that is important in
23 terms of the schedule is that the way that this is set
24 up is that much of it could occur outside the hearing
25 room while the hearing is ongoing. It's not something

(Hanna)

1 that requires the hearing to be adjourned for a two
2 month period or more.

3 MR. MARTEL: Can I ask you a question on
4 that though?

5 MR. HANNA: Certainly.

6 MR. MARTEL: There are some parties who
7 do not have people who could be in both places at the
8 same time. What do you do then? Some of the
9 parties --

10 MR. HANNA: I understand, Mr. Martel, and
11 I understand your question. Let me respond.

12 The only time that you have to be at both
13 places at the same time would be during the negotiation
14 session themselves. The negotiation session
15 themselves, in our proposal, consists of one week's
16 session, which is step 3, and one two-day session which
17 is step 5. So that there's a total of seven days that
18 the hearing would need to be adjourned.

19 The other times could be -- the other
20 requirements are requirements that don't require the
21 individual to deal with it during the hearing time and,
22 therefore, the hearing could continue for the other
23 steps.

24 The next section deals with the
25 facilitator and negotiating procedures. We strongly

(Hanna)

1 endorse the need for a skilled facilitator, one that is
2 trusted and respected I think by all of the parties.
3 We are suggesting that the facilitator be appointed by
4 the Board, that the Board have the responsibility for
5 providing directions to the facilitator.

6 We are also suggesting the facilitator
7 needs some technical assistance. I think the Board is
8 probably sensitive to that having been through the
9 period of time they have with the amount of paper and
10 whatever is involved, there is also the technical side
11 of it.

12 Trying to bring in someone who's an
13 expert in facilitating may not necessarily be an expert
14 in timber management and they may well need some
15 independent technical support to assist them as an
16 advisor to interpret various parties' positions.

17 As far as the negotiating procedures, we
18 are suggesting the negotiations be open to all parties
19 who have submitted terms and conditions according to
20 the Board's directions and that the parties should be
21 responsible for, at the beginning of the negotiation
22 process, of saying that they will abide by the
23 negotiating process in terms of both the spirit and
24 intent.

25 As far as the OFAH negotiating team, it

(Hanna)

1 would be Dr. Quinney and myself.

2 In terms of final acceptance of the
3 negotiated terms and conditions, I believe I have
4 spoken to that. We see an actual formally signed
5 document that would say: These terms and conditions
6 are acceptable to the party in question, and that that
7 would be submitted to the Board and it is through that
8 process that they would be finally authorized by the
9 individual parties.

10 In terms of the submission by the
11 Ministry of Natural Resources and Mr. Wildman's letter,
12 we see no reason at this time for the negotiating
13 process to be adjourned until the Ministry's policy is
14 issued at the end of March.

15 We are encouraged that the Ministry is
16 reviewing its forest management policy but, by the same
17 token, it's hardly going to be a surprise after this
18 issue having been before the Ministry for the period it
19 has. Certainly I can understand that with the change
20 of government there is going to be some new priorities
21 set within the Ministry, hopefully, and that that will
22 have an influence on the overall process.

23 However, the negotiation process, as I
24 see it, is a key element to feed into those new
25 priorities, that one of the things that I see happening

(Hanna)

1 is through the negotiation process that the Ministry
2 staff will be saying: Okay, here's -- what about --
3 how do you like this as a way to deal with the issue
4 you have addressed or you have raised in terms of "x",
5 and that by going through that process and that
6 interchange, that would be a key feed-in to the policy
7 initiatives that the Ministry is analysing.

8 That without that we're basically going
9 to have a policy made, again, internally within the
10 Ministry come down from on high and then we're going to
11 have a negotiation process to go back and review the
12 policy initiatives that have already been announced by
13 the Minister. I see that as somewhat back assward.

14 Those are my comments, Madam Chair.

15 MADAM CHAIR: Thank you, Mr. Hanna.

16 Mr. Hanna, could you tell the Board how
17 you see the hearing process being shortened if the
18 final product of the negotiation process is some set of
19 terms and conditions to which some of the parties have
20 agreed in part?

21 MR. HANNA: I can speak on behalf of my
22 client. If as an example, if the Ministry of Natural
23 Resources was to agree through a negotiation process -
24 and we were to get the agreement of several other
25 parties - that habitat supply analysis was an

(Hanna)

1 appropriate way to approach dealing with the spacial
2 and temporal configuration of wildlife habitat concerns
3 in timber management plans, and that there was a
4 reasonable timetable set out on that type of an issue,
5 I probably would not lead evidence on that particular
6 issue. If -- and that's just an example.

7 Likewise, if during reply evidence the
8 Ministry was contemplating calling evidence on habitat
9 supply analysis, they may well decide not to call
10 evidence on that because they are of the opinion that a
11 reasonable settlement is reached and that the evidence
12 before the Board is sufficient for them to convince the
13 Board that that is a reasonable approach.

14 MADAM CHAIR: Can you remind the Board
15 when your first witness statement is due to be
16 submitted, Mr. Hanna?

17 MR. HANNA: April 29th.

18 MADAM CHAIR: Thank you.

19 Ms. Swenarchuk?

20 MS. SWENARCHUK: Thank you. I want to
21 introduce to you first, Madam Chair, Mr. Martel --

22 MADAM CHAIR: Excuse me, Ms.
23 Swenarchuk -- I don't know, can people hear.

24 MR. COSMAN: I can't hear.

25 MR. HUNTER: I think you're going to have

(Swenarchuk)

1 to speak up.

2 MADAM CHAIR: Thank you.

3 MS. SWENARCHUK: I want to introduce
4 first, Mr. Tim Gray who is one of the co-chairs of
5 Forests for Tomorrow at this time, and Barry Maxwell,
6 who is our Executive Director, who are both here with
7 us today.

8 I'll start by saying that I don't intend
9 to comment on the OFAH proposals for procedures for
10 negotiations, I think if or when negotiations are to
11 happen, I'm sure all parties will have something to say
12 about procedure. I'll make some brief comments about
13 that, but nothing in detail.

14 My clients' view of the process and the
15 previous negotiation sessions have been well expressed
16 by Mr. Hunter and Mr. Colborne. It was for my clients
17 a frustrating and unproductive process and my clients
18 would not be willing to enter into negotiations again
19 on the same basis in which they proceeded last year.

20 And to avoid the problem of last year, we
21 would want to know that the negotiators for the
22 Ministry participating in the process have a mandate to
23 negotiate the issues on the table and that mandate, my
24 clients would want to know, is explicit and clear. In
25 my clients' view, that was what was missing in last

(Swenarchuk)

1 year's process.

2 We hope that one of the meanings to be
3 gleaned from the Minister's letter is that such a
4 mandate will be given to the MNR team. We're not clear
5 on whether that's what the letter means or not. We
6 also have concerns about the wording of the letter in
7 certain respects, including those that Mr. Colborne
8 referred to, but we look forward to taking up the
9 Minister's invitation and meeting with him to explore
10 those concerns.

11 I can't emphasize enough how clear it is
12 in my clients' view that last year's process was not a
13 negotiation process, that what was missing was a
14 mandate in the MNR team to negotiate and that we would
15 be very pleased to enter into such negotiations if that
16 mandate were clear in the team.

17 With regard to the Ministry's request for
18 an extension of time, we take no position on it really.
19 We can't disagree with it since we -- my clients take
20 the position that we would not be prepared to enter
21 into negotiations again unless the mandate were clear,
22 and we hope that a further elucidation of policy to
23 come will make that mandate more clear.

24 There is of course the practical
25 consideration, that we've been referred to today as the

(Swenarchuk)

1 largest intervenor. We don't have the staff and
2 resources to be in two places at once and all of our
3 resources and staff are mobilized to continue to
4 present evidence before you.

5 We think that the entire question of what
6 and how many and whether any issues of this hearing can
7 be resolved through negotiations is really a very
8 difficult one and one that a facilitator even will have
9 great difficulty in assisting with.

10 I've had quite a number of years of
11 experience in labour negotiations, including with
12 facilitators, mediators, very skilled people often in
13 those last hours before a strike deadline, which is
14 when decisions tend to be made, and I would foresee
15 enormous difficulty for a facilitator in negotiations
16 amongst the large number of extremely diverse and
17 conflicting positions represented by the parties in
18 this case.

19 In a labour mediation, for example, one
20 normally has five to ten key issues, usually only
21 between two parties - although there may be more - and
22 those are difficult enough to resolve.

23 But let's compare that to situation to
24 this one. Here we have multi parties, including an
25 entire Industry, not merely one company or sector of an

(Swenarchuk)

1 industry, its government regulator and on the other
2 side - and there is another side - we have parties in
3 support of the application and parties in opposition -
4 we have a wide variety of parties as well, we have
5 environmentalists proposing profound changes in the
6 matter of carrying out an entire industry - and we
7 don't back away from the fact that that's what our
8 proposals amount to - we have native people with
9 claims, legitimate claims in our view rooted in the
10 complexities of centuries of Canadian history, we have
11 union concerns from workers and innumerable proposals
12 for change in the timber management process from many
13 parties. You've seen the number of different terms and
14 conditions that the various parties have proposed.

15 Let's just consider for a moment the much
16 debated issue of clearcut size. Now, the Board may
17 have the impression that there have been some ongoing
18 negotiations on this issue, you might have got that
19 impression from the particular type of
20 cross-examination conducted of our witnesses on the
21 particular wording of our terms and conditions for
22 silvicultural prescriptions.

23 The Board should know that there have
24 been no negotiations of this issue despite, our request
25 to the Ministry to talk to us, and sometimes those

(Swenarchuk)

1 requests have been on the record and other times they
2 have been off the record. There have not been any
3 negotiations even of the concept of clearcut size
4 limits and certainly not on the particular wording.

5 There has been no negotiation of the
6 question of a move of emphasis from artificial to
7 planned natural regeneration. So in fact there have
8 been no discussions on any of these issues since last
9 February, and I concur with those who characterize
10 lastFebruary's discussions as not really being
11 negotiations.

12 And, of course, there is another very
13 major party in these hearings which is in support of
14 the application as it's now been filed and that is the
15 Industry. We have no knowledge as to whether the
16 Industry is prepared to discuss such concepts either.

17 Let's look at some of the other major
18 concepts that are proposed by my client. A move to
19 integrated pest management rather than the wide-spread
20 use of pesticides. Management for biodiversity based
21 on landscape management.

22 My clients support the right of native
23 people to forest allocations. We propose a move to an
24 entirely new and different planning process, and we
25 propose serious consideration of economic factors,

(Swenarchuk)

1 including the public cost of artificial regeneration in
2 making management decisions.

3 Each of these is a very significant
4 change in forest management across the entire province.
5 So the important, and I'm afraid in my view, rather
6 discouraging result of all these considerations, in my
7 view, is that negotiations are most unlikely to resolve
8 these important issues fully or even, in my view, very
9 substantially.

10 We hope that with new initiatives from
11 the Ministry that some of these issues we'll see some
12 movement in some direction from the Ministry. There
13 remain, however, other parties, notably the Industry,
14 to consider with regard to how far those movements can
15 go.

16 My conclusion from all of this is that it
17 will return to the Board to write a decision that
18 decides most of these issues. It may be an easier
19 decision for the Board to write because some of the
20 issues may have been resolved and have been resolved to
21 some extent, but with all of those concerns, the need
22 for a clear, detailed and complete description of new
23 Ministry initiatives and the need for an explicit
24 statement of a mandate to negotiate on the part of the
25 MNR team in negotiations.

(Swenarchuk)

1 With all of those provided, we're of
2 course prepared to enter into the process and proceed
3 as far down the road as we can. I end, however,
4 remaining, as Mr. Hunter said earlier, somewhat a
5 skeptic as to how much can be resolved, given the
6 diversity of interests and whether, to any significant
7 extent, the hearing can be shortened.

8 MADAM CHAIR: Thank you, Ms. Swenarchuk.

9 MR. HUNTER: May I ask Ms. Swenarchuk's
10 views on adjournment. Do you have any --

11 MS. SWENARCHUK: I said earlier, Mr.
12 Hunter, sorry to dissappoint you, that we see no
13 indication at this time that the MNR team - and perhaps
14 the Minister intends to tell us at some point but
15 hasn't now - we see no indication at this time that the
16 MNR team in these negotiations would have a more
17 explicit and complete mandate to negotiate than existed
18 in the last round. That's the first problem.

19 We don't consider it productive to enter
20 into negotiations on the basis of the current terms and
21 conditions if in fact significant initiatives are
22 coming and, of course, we're here at the Board every
23 day presenting our case, so from that perspective we
24 can't disagree with a request for an adjournment
25 because we would not be prepared to enter into

(Swenarchuk)

1 negotiations at this time based on old positions and no
2 explicit mandate in the Ministry to negotiate.

3 MR. HUNTER: Thank you.

4 MADAM CHAIR: And one question, Ms.
5 Swenarchuk. With respect to the new initiatives coming
6 from the Ministry of Natural Resources, how do you
7 expect that they would be compatible with the issues
8 before this Board, or how would you deal with new
9 initiatives that have very little to do, that we don't
10 have any evidence on?

11 MS. SWENARCHUK: I would foresee a
12 necessity on the part of the Ministry to lead evidence
13 before you on those initiatives, whether reply or on
14 some other basis. I agree with what I see is an
15 implicit position that you're expressing which is that
16 it causes difficulties.

17 On the other hand, throughout the
18 hearing, because it has gone on for so long, we've
19 heard of other Ministry initiatives which are
20 proceeding and which presumably the Board is to hear
21 about at some time.

22 Number one in my clients' interest I
23 guess is the new proposed timber management planning
24 policy which the annual report of 1989 said would be
25 released in August of 1989. I do not believe that the

(Swenarchuk)

1 Board would wish to proceed with a decision on this
2 case without considering that policy, if it in fact is
3 produced. And so with all the difficulties of varying
4 new initiatives, still I believe the Board will want to
5 consider those.

6 I don't really understand what is meant
7 by many of these six bullet points and some of them
8 cause me concern. But since I don't understand them
9 and no more information is forthcoming at this time,
10 which I think is very unfortunate, I can't comment
11 further on them.

12 But to the extent that in fact the
13 Ministry's management of forest resource changes during
14 the time of this hearing, I believe that the Ministry
15 has an obligation to bring before you evidence in
16 support of those changes.

17 Yes, I think -- I don't like to think of
18 the consequences if we were forced to characterize
19 those changes as a new application. I think we could,
20 however, deal with changes in the Ministry's terms and
21 conditions and hopefully the evidence required in
22 support of those would be minimal. Of course we've all
23 said that with respect to evidence before. I do think,
24 however, that unquestionably you have the jurisdiction
25 to make a decision on all of these issues as they touch

(Swenarchuk)

1 your jurisdiction, and that the Ministry is required to
2 bring them before you for your decision.

3 MADAM CHAIR: Do you think this hearing
4 will ever be finished, Ms. Swenarchuk?

5 MS. SWENARCHUK: I just looked as far as
6 April, Madam Chair. I sincerely hope that the
7 initiatives from the Ministry will have the effect of
8 shortening the amount of evidence that other parties
9 are required to put before you.

10 My concern however, regardless of however
11 much we all speak, we all as intervenors may agree with
12 those initiatives, is that of course there's another
13 party, major, major party in support of the application
14 as it was originally filed, and so we have yet to hear
15 how the Industry will want to deal with initiatives
16 even if they're of a sort that some of the other
17 intervenors look upon favourably.

18 MADAM CHAIR: Thank you, Ms. Swenarchuk.

19 Mr. Cosman?

20 MR. COSMAN: Madam Chair, if I may just
21 for a moment, because Ms. Swenarchuk has suggested that
22 in part it will depend on how Industry will respond to
23 the initiatives. And I can say on behalf of our client
24 that we do not know yet what those initiatives will be,
25 as do none of the parties I assume, and we do look

(Cosman)

1 forward to seeing them.

2 It has been our position in the past that
3 we approach all initiatives unobstructively and we will
4 enter in good faith in a negotiating process with the
5 parties, as we have undertaken to do, and we will
6 clearly do what we can. I'm not as pessimistic as Ms.
7 Swenarchuk is in terms of how -- as to why such a
8 negotiating process need be a failure.

9 If one party were to say: Well, I'm not
10 going to move and it's up to Industry, if Industry
11 moves, then of course the process is going to be a
12 failure; but if all parties are prepared to negotiate
13 in good faith and not just one party stand back and
14 say: I want the other parties, it MNR or Industry, to
15 move, then we may be able to achieve something.

16 I have addressed you on the application
17 for an extension of time that has been made by the
18 Minister of Natural Resources and supported by the
19 Ministry of the Environment. I haven't addressed you
20 on the specifics of the matters that have been raised
21 and I don't propose to do so tonight.

22 As you know, Mr. Colborne suggested that
23 there should be an order under Section 23(2) of the
24 Statutory Powers Procedure Act. I'm sure you don't
25 want to hear submissions on that to. If such an

(Cosman)

1 application is to be made, I will address you at the
2 appropriate time.

3 Furthermore, with respect to Mr. Hanna's
4 very comprehensive and specific proposals that have
5 been put forward, we received them at the same time
6 that you did, we have to study them and, as Ms.
7 Swenarchuk said, we will consider them in discussions
8 with other parties work out a set of negotiating
9 procedures that would be effective.

10 I do want to say at this time that we do
11 support the appointment of a facilitator. It is our
12 position that a facilitator can be of tremendous
13 utility in assisting in the negotiation process. There
14 must be some recognition at the same time as to the
15 limits on what a facilitator can do.

16 A facilitator, and no one - and with this
17 I agree with Ms. Swenarchuk - is going to have the
18 background and knowledge that you have acquired over
19 two and a half years of education through this hearing
20 process to effectively and substantively deal with the
21 issues that are before them. At the end of the day
22 there's no question in my mind - and I don't think
23 there's any question in anybody's mind here - that
24 there are going to be very important decisions that are
25 going to have to be made by this Board, but there may

(Cosman)

1 be some matters that, with the assistance of a
2 facilitator, we may be able to achieve an agreement on
3 which, if put before the Board and if the Board finds
4 favour with it, it can be incorporated as part of the
5 Board's order.

6 But at the same time, again, I come back
7 to it, a facilitator must be an awfully good chairman
8 or chairperson, a facilitator is not going to be the
9 magic expert who's going to understand and comprehend
10 all of this, all of the issues that you have to decide
11 and that have been put before you and make parties come
12 together.

13 It's one thing for a labour negotiator to
14 say: Well, you want \$10 more an hour, you don't want
15 to pay \$10 more an hour, how about five or seven. It's
16 a very different thing to deal with the kinds of issues
17 that you have to decide upon, and it would take an
18 exceptional person - if we can find him or her - to do
19 this job.

20 I think we can and I have names that I
21 would propose, and I'm sure other parties -- and I do
22 know some other parties have such names of people who
23 are objective, honest, have integrity and whose views
24 will be accepted by the parties, except for those
25 parties who don't want to move or budge and, of course,

(Cosman)

1 then that matter becomes a matter for the Board to
2 decide.

3 But, in any event, I do want to put it on
4 the record that I will respond to the proposal made by
5 Mr. Hanna and to proposals made by any other party once
6 the Board has decided on the matter of the adjournment,
7 and I'm sure that the parties working together can put
8 forward something jointly or, if not jointly, in a
9 manner that you can decide as to what an appropriate
10 procedure should be for the conduct of such
11 negotiations.

12 MADAM CHAIR: Thank you, Mr. Cosman.

13 Mr. Campbell?

14 MR. CAMPBELL: Thank you, Madam Chair.

15 As usual I am tempted to say that we are
16 all making a very simple matter before you today as
17 complicated as it can possibly be.

18 My submissions are that the question
19 before you today is not a complicated one. Mr.
20 Wildman's letter, certainly my instructions, make it
21 clear that this government is determined to take new
22 directions in this area of forestry policy.

23 The letter refers to the Throne Speech
24 and I want to read that paragraph:

25 "Nowhere is the link between the

(Campbell)

1 environment and the economy more evident
2 than in forestry. In the past few years
3 our forests have been a cause for concern
4 when they should have been a source of
5 pride. We believe in sustainable
6 forestry and are determined to see that
7 our forests are regenerated."

8 The Minister is making it clear that new
9 directions are intended. In setting out the letter,
10 it's indicated that those specifics, to try and give
11 you some sense of the kinds of things that are being
12 looked at, six examples are given, including six
13 matters, not exhaustive, including, the word is
14 including.

15 Now, the position we found ourselves in,
16 Mr. Freidin and I, in those circumstances is, we had a
17 clear statement from the government that it intended to
18 take some steps in this area, it intended to initiate
19 some new directions, and we had a January 30th date
20 coming up and we had a government decision-making
21 process which, quite properly, we are not able to go
22 into any of the details, nor can those details be
23 discussed until the government has taken its general
24 policy direction and given it a shape and a definition
25 so that it can be presented both publicly and to this

(Campbell)

1 Board.

2 Now, in those circumstances, in my
3 submission, it would have been entirely inappropriate
4 to ask the parties to either embark on a negotiating
5 process, presumably without knowing about these new
6 policies, or even to embark on serious discussions of
7 the precise design of that process - delighted to have
8 Mr. Hanna bring forward his suggestions and we'd be
9 happy to talk to him about the merits of that kind
10 of approach - but to embark on a discussion of those
11 two items, both the design of the process and to embark
12 on the negotiations themselves only to -- in the full
13 knowledge on our part that there were some initiatives
14 coming forward and then some way into that announce:
15 Oh, by the way, there are some things that might have
16 changed both the topics of the negotiations and how
17 they were conducted, would have been, in my submission,
18 quite inappropriate.

19 A simple problem. We know there are some
20 changes coming in the policy direction in this area, we
21 have a date that we had to deal with in terms of the
22 proposal and, in my submission, the only fair thing to
23 do was exactly what's been done, to advise the Board
24 and the parties, say when those things are announced
25 that's the time to think about going into those

(Campbell)

1 negotiations and to think about exactly how they should
2 be conducted in the full knowledge, in the full
3 knowledge of the new directions that this government
4 intends to take.

5 I think it is important in making these
6 submissions to recognize that what is clearly conveyed
7 in this letter is an invitation to the parties to help
8 develop those initiatives and reflect those new
9 directions in the timber management planning process.

10 This government has said it's going to be
11 consultative. This is part of that process. And, in
12 my submission, the adjournment that has been requested
13 should be supported because it, by its very nature and
14 by its very definition, has the possibility to
15 significantly contribute to meaningful negotiations and
16 to negotiations which may well achieve solid results,
17 despite the kind of difficulties raised by Ms.
18 Swenarchuk.

19 And it is for all of those reasons that I
20 rise to support, with my modest additions, the request
21 for the adjournment.

22 I do want to address one matter that you
23 have raised, Madam Chair, in several questions and,
24 that is, does this mean that a whole bunch of new --
25 that in effect that all new evidence has to be heard if

(Campbell)

1 there's a significant change in direction. And this
2 government intends to make changes in this area.

3 Now, in our submission, what is not
4 required is a whole bunch of new evidence on this.
5 What we're talking about is new directions which may
6 result, which may result in a change of position, and
7 it is quite proper for any party to this hearing,
8 including MNR, to say in light of this or in light of
9 having embarked on the negotiations, in light of having
10 considered the evidence further our position has
11 changed, our position based on the evidence is now
12 this, and we take the position that there is more than
13 sufficient evidence already on record to support this
14 new position.

15 Yes, we may have argued for something
16 slightly different, but why should it be assumed that
17 we are all hide bound, why should it be assumed that we
18 are incapable of listening to the evidence as it goes
19 in, listening to Forests for Tomorrow's case, listening
20 to the Industry's case but not having it touch our
21 views on the issues before you at all. That is a wrong
22 assumption.

23 The parties have been listening and they
24 are both entitled and ought, when they feel it
25 appropriate, to advise you that for whatever reason, in

(Campbell)

1 light of the evidence, in light of where they are now,
2 their position has moved from this to this. That
3 doesn't require any more evidence.

4 If there are agreements reached in
5 negotiations, counsel who are bringing them before you
6 will say: Now, are we sure we've got enough evidence
7 on the record to support this kind of an approach. And
8 to the extent that there may be some element identified
9 as missing, then it will be decided how to fill that
10 in. But there's a lot of evidence in front of you and
11 I believe that the Board should not be concerned in
12 connection with these new directions that this
13 government intends take that it necessarily implies
14 vast amounts of new evidence. I do not anticipate that
15 result at all.

16 There is a vast amount of evidence here,
17 the question is: What's the right conclusion to draw
18 from all that evidence, what's the right conclusion to
19 draw, and part of deciding what the right conclusion
20 is, what's the frame work within which we're coming to
21 that conclusion, and if the government says: This new
22 government is changing that framework, it can change
23 the conclusions and it doesn't need to change the
24 evidence at all.

25 MADAM CHAIR: Mr. Campbell, you will

(Campbell)

1 agree with a view that the EA process has been set up
2 and must operate, regardless of changes of government,
3 regardless of changes in Ministry staff, regardless of
4 changes in who represents intervenors or what their
5 positions must be.

6 We're here to undertake a process that
7 requires fair treatment for everyone who appears before
8 us and to approve some sort of a planning process, and
9 it doesn't matter essentially which government might be
10 in power, which emphasis they might give to any set of
11 issues.

12 What Mr. Martel and I have to keep our
13 focus on is approving the best planning process we can
14 get out of this hearing.

15 MR. CAMPBELL: That's exactly right. I
16 take no issue with any of that, but that does not mean
17 that the parties in front of you are inevitably tied,
18 each one of them, to the position that they took on
19 issues in day one of the hearing right through to the
20 end.

21 MADAM CHAIR: No, but at some point the
22 application changes, at some point we have the same
23 application that we can look at and that we can make a
24 decision about and, beyond that, at some point it's a
25 somewhat different application.

(Campbell)

1 MR. CAMPBELL: Well, you have heard from
2 Mr. Freidin, and I support that submission, that in
3 terms of the formal description of the application it
4 isn't proposed that that be changed. It goes back to
5 what we talked about with the meetings on the planning
6 process, whether you take the view that the planning
7 process is part of the four activities or whether the
8 planning process isn't --

9 MADAM CHAIR: We did take that view, Mr.
10 Campbell.

11 MR. CAMPBELL: Yes, I understand that
12 fully, but what we're talking about here is bringing
13 before you an application and there's a framework then
14 that starts to surround that as to how the specifics of
15 that get dealt with, and to change position on the
16 elements of that does not make it into an application,
17 it is something that parties have to do in the normal
18 course of hearings in light of the evidence that comes
19 before them, and a government decision to make changes
20 in a policy area is simply part of that framework that
21 has to be borne in mind when parties take positions.

22 Yes, in these hearings they tend to be
23 longer and there's more exposure to that kind of
24 change, but it's not an abnormal thing. The particular
25 problem, the particular problem that we face here is

(Campbell)

1 that we were in the middle of it when we came up to
2 this January 30th date.

3 All we're dealing with here today is
4 saying, in light of that, in light of that we don't
5 think it's fair to deal with this negotiation process
6 and so on until the initiatives are announced.

7 I've described them to you in the way
8 that I think is consistent with Mr. Wildman's letter.
9 In the end the judgment as to how the change that they
10 bring to this process is one that the Board will have
11 to decide and to the extent that we can use the
12 negotiation process to help in that, I think the letter
13 is clear that that is exactly what Mr. Wildman's
14 objective is as well. You've heard a lot of concerns
15 about that.

16 What you also have in front of you is an
17 invitation from Mr. Wildman to discuss these very
18 matters with the parties who are raising those
19 concerns. Every party receiving this letter has been
20 invited to come and speak to Mr. Wildman to consult on
21 their views of all of this.

22 MADAM CHAIR: The government is free to
23 consult with anyone any time, they are free to make
24 policies whenever they want in any areas. The concern
25 of this Board is that interface into the Board's

(Campbell)

1 business.

2 MR. CAMPBELL: And there is no intrusion
3 here into the Board's business in even the smallest
4 degree, none. What the government is saying -- you
5 know, they sort of meant what they said, we do intend
6 to set some new directions, and it would be entirely
7 inappropriate for the government ministries before you
8 to sort of proceed along while that was done. That's
9 all -- it's a simple matter. That's all that is being
10 said today.

11 There are concerns raised about the scope
12 of the policy and this and that. We can't deal with
13 those today, we can only deal with them in light of the
14 policy direction when it is announced, and that's why
15 the application is before you today.

16 The Board should not be, in my
17 submission, leaping to conclusions as to what will or
18 will not be the effect of the particular directions
19 that are announced when they are announced. If there
20 are issues of that type that arise, deal with them
21 then, but we can't deal with them in the abstract, they
22 are not announced yet.

23 MADAM CHAIR: Well, the Board won't be
24 holding up the progress of the hearing in any way
25 waiting on the new initiatives that might be announced.

(Campbell)

1 MR. CAMPBELL: And there is no suggestion
2 before you that that be done. All we are saying --

3 MADAM CHAIR: Well, the suggestion, Mr.
4 Campbell, it isn't a suggestion, in effect what's
5 happened is the parties will not be going ahead with
6 the negotiation process; effectively Mr. Freidin has
7 asked for an adjournment that will extend several
8 months, if we decide to grant that. So I suggest that
9 there have been some changes to the hearing already.

10 MR. CAMPBELL: I took your comment as
11 being to the hearing process as it was proceeding in
12 the hearing room before you.

13 There's nothing here that says we should
14 stop while all of this is being waited for, nothing
15 like that. And it has it -- in our submission is
16 simply this, that it would not have been fair to anyone
17 under these circumstances to ask them to put the time
18 and effort into that negotiation process. That is the
19 whole essence of what we're saying. It's not
20 complicated.

21 MR. MARTEL: I want to ask Ms. Swenarchuk
22 a question.

23 Let me say what's worrying me. I sat
24 here now for a couple of hours and listened carefully,
25 and if I were a betting man I would say we're not going

(Campbell)

1 to make that much progress because of an attitude that
2 I -- I just hear it. I've been in negotiations too,
3 complicated negotiations.

4 I mean -- and I wanted to ask Ms.
5 Swenarchuk, there are complicated issues, and all kinds
6 of parties, but there's also a lot in there, in those
7 terms - and I'm talking about the broad ones, you know,
8 I'm talking about clearcut and landscape and so on -
9 but there's also a lot of other terms and conditions
10 which aren't that far apart even by all the parties,
11 and yet what I hear here, I could just pull my hair
12 out, because it's a deliberate - not deliberate, I
13 don't want to say that - it's almost a conclusion
14 before we start, a defeat before we begin.

15 I understand the process, we didn't have
16 to be told about the process that occurred, and no one
17 has talked to my colleague and I. But, you know, after
18 15 months, when nothing happens, you don't have to be
19 very bright to realize no negotiations are going on; I
20 mean, you don't have to have the wisdom of Solomon to
21 understand that. So we knew nothing was going on.

22 But why do you think we issued our order
23 several months ago, to try and push the process a
24 little bit, to try to make something happen.

25 And we come here today and, geez, I may

(Campbell)

1 as well stayed home because I haven't heard a positive
2 thing hardly about anything, and that's frightening
3 after three years. And we've been -- the two of us
4 have sat through every day of this by the way and just,
5 quite frankly, it boggles the mind.

6 I guess what I'm trying to drive at is,
7 there are lots of -- there are some broad issues that
8 are going to be tough but it could not help, if we
9 could get rid of all the range of the small ones, would
10 that not make the Board - who ultimately, I agree with
11 you, are going to have to make the decisions - to make
12 the decisions on the real tough issues that maybe we
13 can't get an agreement on.

14 MS. SWENARCHUK: Oh yes, I think that
15 some of those smaller issues possibly, if there's a
16 real mandate to negotiate, that possibly can be.

17 MR. MARTEL: I accept that. I accept
18 it's got to be a real mandate.

19 MS. SWENARCHUK: I think my clients'
20 concern is for those real issues, the large ones, the
21 ones that my clients' case is really structured to
22 present before the Board and to date I would say
23 disrespectful reception that those proposals have
24 received.

25 If that changes, I hope I made it very

(Campbell)

1 clear, we will be pleased to negotiate a new direction.

2 MR. MARTEL: Thank you.

3 MR. CAMPBELL: And, Mr. Martel, if I can
4 comment on that particular point. You know, it may
5 just be -- maybe it is hard to be optimistic about
6 these things after three years, but it may just be that
7 these policy initiatives help in this regard. You
8 know, it's not beyond the realm of possibility that
9 they do loosen things up a little bit, they do let
10 people move positions a little bit so that agreements
11 can be reached.

12 You know, I haven't been here every day
13 and maybe I bring naive optimism in that regard, but I
14 think it's a possibility, I think it's worth trying.

15 There's no ill peace. The government has
16 said it intends to do things that make a difference.
17 Well, maybe it will make a difference.

18 It has nothing to do with the particular
19 motion that is in front of you today, because the
20 particular narrow problem that we're dealing with is
21 simply the timing and trying to be fair in light of
22 that timing.

23 MADAM CHAIR: Well, the timing is
24 important, Mr. Campbell, ultimately agree to shortening
25 the hearing beyond a certain point negotiations may be

(Campbell)

1 a very good way of informing parties and having them
2 come closer to positions or doing whatever is
3 beneficial for their own cases, but it's not going to
4 shorten the hearing.

5 In fact the sort of negotiations you're
6 talking about, hand in hand with new initiatives, might
7 in fact lengthen the hearing.

8 MR. CAMPBELL: Well, I certainly don't
9 share the latter with you. I think there is a
10 possibility that it can shorten the hearing.

11 MADAM CHAIR: How?

12 MR. CAMPBELL: Because of the very
13 question that Mr. Martel put to Mr. Freidin.

14 MADAM CHAIR: Well, the time it takes to
15 write our decision we're not factoring in, we're
16 talking about hearing time, the number of days we will
17 sit from now until the day we rise, until it's all
18 over. How will that be shortened?

19 MR. CAMPBELL: There are a number of
20 factors that can be influenced in all of this, length
21 of evidence going -- the remaining evidence going in.

22 I agree with you, Forests for Tomorrow
23 wants to finish its case, that will take until April.
24 By that time these things will be announced. Forests
25 for Tomorrow has said it's not in a position to deal

(Campbell)

1 with anything but the presentation of its case right
2 now, and I understand that. So we're there.

3 Now, at that point, if these things can
4 make a difference, then maybe they can break the log
5 jam. It's right then is the kind of time that this log
6 jam - if you're convinced that it exists - maybe it can
7 be broken, and maybe the directions that are being
8 outlined are just the thing to help break it.

9 As I say, I don't sit here every day and
10 it's perhaps much more--

11 MADAM CHAIR: You're lucky, Mr. Campbell.

12 MR. KAPLAN: --it's much easier for me to
13 be optimistic about this than perhaps for someone who
14 has sat in your seat for lo these many months, and
15 perhaps our difference is only that.

16 But I urge upon you to retain some hope
17 that this can be done, and understand how: If that
18 negotiation process is put in place such that it cuts
19 down on the amount of evidence that goes in, it means
20 that matters that MNR might otherwise have had to reply
21 to doesn't need to respond to. It means that --

22 MADAM CHAIR: Well, I remind you that we
23 are going to hear submissions in the middle of February
24 about limitations on reply and argument.

25 MR. CAMPBELL: It means that in terms of

(Campbell)

1 - preparation of argument, the more that can be dealt
2 with and brought to a conclusion through negotiations
3 the less time has to be spent on that. I don't know
4 what -- you know, we haven't settled how to deal with
5 argument yet, but it has a spill-over effect in a
6 number of areas, each one of which has the possibility
7 for making significant gains.

8 Again, I can't stand here and say this is
9 all going to happen, what I can say is that the kinds
10 of things that this government or the government of
11 attitude that this government is projecting in Mr.
12 Wildman's letter is the kind of attitude that cannot
13 but help in that regard, and every one of us in this
14 room will have our own different personal view of what
15 will come out - maybe this will come out, maybe that
16 will come out - and, therefore, how much it will help,
17 but right now we're all just speculating, but it cannot
18 but help. That's my essential point.

19 All of which, of course, is completely
20 irrelevant to the particular matter that's being dealt
21 with today, which I will end where I began, is a very
22 simple request and one that is based on a simple notion
23 of fairness.

24 It would not have been fair to embark
25 into that process with the government ministries

(Campbell)

1 knowing that work was going on in this area and we
2 didn't know when it would be announced and other
3 parties not being privy to the same information and the
4 same knowledge.

5 But by the nature of the development of
6 government policies, it can't be dealt with at this
7 time, and that is a simple fact. Once there is a
8 direction set, then there is an opportunity to use that
9 negotiation to help in all the ways that you want to
10 see those negotiations held.

11 MS. SWENARCHUK: I'm not sure how many
12 times Mr. Campbell met himself coming through a
13 revolving door on that one that he characterized as
14 simple.

15 MR. CAMPBELL: I'm not going to sit down
16 until everybody's finished.

17 MS. SWENARCHUK: I wonder if I can have
18 an answer to my question, my primary concern which is
19 for this proposed round of negotiations, whenever they
20 may happen, will the MNR negotiators have a mandate to
21 negotiate all the conditions on the table?

22 MADAM CHAIR: Do you want to answer that,
23 Mr. Freidin?

24 MR. FREIDIN: Well, that was one of the
25 things that I wanted comment on and it addresses -- my

(Freidin)

1 comments will address Ms. Swenarchuk's question and Mr.
2 Martel's concern that he hasn't heard anything
3 positive.

4 The position which has been taken by the
5 Ministry to in fact have the time to discuss these
6 issues internally and to develop these initiatives to
7 do exactly what you suggested in your very first
8 question to me, Mr. Martel, and that is to be able to
9 go to negotiations --

10 MR. MARTEL: Let me cut you off right
11 there, though, Mr. Freidin. I was talking about the
12 responses after that are exchanged, that the
13 atmosphere - if I can use the right term - if that was
14 what was here today for negotiations, it was so
15 pessimistic that there seemed to be no way, if you were
16 an outsider listening to this discussion, that anything
17 could happen, that one would ring their hands in
18 dismay.

19 I mean, I'm pleased to see some of the
20 things that are being presented, but it's the
21 atmosphere as to go around, went around, the discussion
22 from one party to the next, if you were to judge it now
23 didn't leave much room for optimism, and that's what
24 worried me and that's my perception, and maybe no one
25 agrees with me.

(Freidin)

1 MR. FREIDIN: And I appreciate your
2 perception. I can only speak on behalf of the
3 Ministry, and the Ministry have indicated, requesting
4 the adjournment for the reasons I indicated in fact to
5 have an opportunity to perhaps have some more
6 flexibility in relation to some of these big issues
7 that other people want to discuss so that we will have
8 a mandate to in fact do something, to in fact negotiate
9 something, there will be some give and take in the
10 negotiations, and that is why we need this time.

11 I can't -- you know, I have to be
12 optimistic and hope that initiatives will in fact
13 result in an increased ability to deal with some of
14 these very difficult and complex issues and it's for
15 that reason that we ask for the adjournment.

16 I mean, if the Board -- Mr. Martel, I
17 mean, if the Board really perceives that the atmosphere
18 is such that notwithstanding the goodwill of some
19 parties that it's impossible, then you've have to make,
20 you know, your decision on negotiations with that frame
21 of mind.

22 But I'm just saying on behalf of the
23 Ministry, we feel that there is a substantial enough
24 chance of something being worked out if these
25 initiatives are developed in a certain way, that it's

(Freidin)

1 worth taking the opportunity to discuss those matters
2 with these parties. And if the initial atmosphere is
3 negative now, hopefully that will change, however, I'll
4 have to remind them and beat them over the head a bit,
5 I don't know. You know, we want to resolve the issues
6 of concern to the parties. So I think that's all I
7 wanted to say on that.

8 There is just one point though. People
9 talked about the negotiation process and the last one
10 wasn't successful. I just want to indicate that
11 you've seen three different drafts of the Ministry's
12 terms and conditions, every change whether it's
13 underlined or capitalized, was made, was a change that
14 the Ministry made in response to the positions of other
15 parties.

16 Whether it's enough to satisfy everybody,
17 obviously it has not been, but every change you have
18 seen three times have been a response by the Ministry
19 of Natural Resources in an attempt to deal with the
20 concerns of other people, and now the Ministry is
21 coming and saying, notwithstanding that, we think
22 there's maybe a chance of doing even more in relation
23 to some of those concerns, and I'm just saying give us
24 a chance, give the process a chance.

25 These parties and the decision of this

(Freidin)

1 Board is in relation to a very important matter, and
2 these people, all the parties here are going to have to
3 work together for a long time in the future and to the
4 extent that negotiated things can be the outcome of
5 this as opposed to imposed terms and conditions, I
6 think that is a good thing, and if that means an
7 inconvenience for some or negative connotations in some
8 respects, I think if timber management and the process,
9 the working relationship between these parties in the
10 long term has a chance of being improved because we can
11 negotiate some big issues, then I say let's do it.

12 And the last thing I wanted to address is
13 Mr. Colborne's comment about the interests or the
14 concerns of his clients and I would just say this. If
15 I understand him, he said that his matters somehow were
16 different, that they were not tied to what was set out
17 in the Minister's letter and perhaps could go on and be
18 negotiated separately.

19 Well, I invite Mr. Colborne, and I
20 suggest to Mr. Colbourne very strongly, that he take
21 the Minister of Natural Resources up on the Minister of
22 Natural Resources' offer, go and talk to him, talk to
23 him about that process, because although it's not set
24 out in the letter I can assure you that the Minister of
25 Natural Resources is in fact committed to addressing

(Freidin)

1 matters of concerns to native people. He's also the
2 Minister, as I understand it, in charge of native
3 affairs, not just the Minister of Natural Resources.

4 So to Mr. Colborne I say, go and see the
5 Minister, take him up on his offer and maybe something
6 will come out of that.

7 And those are my submissions, Madam
8 Chair.

9 MADAM CHAIR: Mr. Colborne?

10 MR. COLBORNE: I wonder if I could have a
11 word, Madam Chair.

12 To clarify a procedural point, initially
13 I had suggested indeed that the issues that my client
14 has been trying to bring before the Board, and I think
15 meeting resistance and total resistance from the
16 proponent from day one, that those matters are indeed
17 special for that reason.

18 And I had suggested that you might, for
19 instance, grant the adjournment requested but put a
20 rider on it, the rider being that in respect to these
21 special issues which the proponent cannot seem to
22 appreciate are in fact before the Board, those special
23 issues, that the proponent is required to commence
24 negotiations and at the end of the adjourned period,
25 whenever it may be, come back and not only respond to

(Colborne)

1 what was in the initial order of December 10th I think
2 to come here on this date with a plan, not only come
3 with a plan on that date, but also come with a progress
4 report. Has the Ministry in fact made any progress,
5 have they broken down this seeming brick wall?

6 Now, Mr. Cosman has suggested that
7 because I mentioned Section 23 of the Statutory Powers
8 Procedure Act that perhaps some motion ought to be made
9 with respect to that.

10 My submission would be that no formal
11 motion is required. We have been standing here for
12 more than two hours making submissions with respect to
13 a request for an adjournment of a deadline in your
14 order, there's no formal notice of motion, at least not
15 one that has ever been sent to me.

16 And so my submission would be that you
17 could make an order of that type, of the type I have
18 been requesting, without a motion being brought
19 forward. But if I'm confused on that point, maybe it
20 ought to be clarified now. Because if I must produce a
21 motion at some time in advance in writing, then I
22 certainly will and I will get a date with your
23 registrar and proceed in that manner. I am though
24 under the impression I don't have to do that.

25 Now, that connects with what Mr. Freidin

(Colborne)

1 said in the end, he said, take up the Minister. Well,
2 sure, but Ministers are paid to meet with the public,
3 civil servants are paid to go to meetings. There is
4 nothing new about that. My clients have been waiting
5 for a hundred years. They have had fluffy political
6 promises from an endless succession of politicians and
7 they're not impressed, they'll be impressed when
8 something actually happens and that's why we are
9 requesting actually an order from this Board to that
10 effect.

11 If I may, I would like to comment on one
12 point that I didn't think was going to be addressed by
13 all of the parties because it seemed to me that the
14 submissions were focused elsewhere, but there has been
15 some discussion of a facilitator.

16 I did obtain some instructions from my
17 clients on that point and I just want to convey them to
18 you for your information. My clients have the view
19 that there have been a long succession of white
20 establishment types who have been appointed and sort of
21 sent north to deal with the Indians periodically
22 whenever the headlines get too big in the Toronto
23 papers. They are not interested in that again, but
24 they what they want are negotiations, but not phony
25 negotiations, real negotiations, respectful

(Colborne)

1 negotiations, equal negotiations, where their position
2 is not marginalized but their position is taken
3 seriously.

4 Thank you.

5 MADAM CHAIR: Thank you, Mr. Colborne.

6 MR. FREIDIN: Madam Chair, may I just
7 respond to this situation about the Board ordering
8 negotiations.

9 I don't even take a position as to
10 whether any formal notice of motion is required,
11 however, I can indicate to you that it is the position
12 of the Ministry of Natural Resources that the Board,
13 under the Statutory Powers Procedure Act does not have
14 the jurisdiction to make the kind of order that Mr.
15 Colborne has requested.

16 I have been taken by surprise in that
17 regard, and if in fact the Board intends or is inclined
18 in any way, without legal argument, to grant Mr.
19 Colborne's request, then I would request in fairness
20 that he file a notice of motion, not because maybe a
21 notice of motion is really required, but I want to see
22 some documentation, I want to see some case law and I
23 want an opportunity to respond with the case law if
24 necessary.

25 Obviously it's an important matter and if

1 the Board actually did what Mr. Colborne is requesting,
2 in my submission, if my interpretation of the law is
3 correct, it would be given in error and certainly sets
4 a precedent which, if it was in error, I don't think
5 the Board would want to get into.

6 MADAM CHAIR: The Board will consider
7 your request, Mr. Freidin.

8 MR. FREIDIN: One last matter. I almost
9 hate to raise it, Madam Chair. May I?

10 MR. MARTEL: Mr. Hunter wanted to speak
11 on this issue.

12 MR. FREIDIN: Oh, I'm sorry.

13 MADAM CHAIR: Well, Mr. Hunter, do you
14 want to let Mr. Freidin finish?

15 MR. HUNTER: Of course.

16 MADAM CHAIR: He'd rather you finish, Mr.
17 Freidin.

18 MR. FREIDIN: It's not in relation to the
19 adjournment, it's in relation to the issue of the
20 February date for reply and argument.

21 So maybe Mr. Hunter can have his --

22 MADAM CHAIR: All right. Mr. Hunter, go
23 ahead.

24 MR. HUNTER: Mrs. Koven, I just wanted to
25 say upon reflection that we agree with the request for

(Hunter)

1 the adjournment, not for the reasons that Mr. Campbell
2 has stated, but Ms. Swenarchuk.

3 MR. CAMPBELL: I thought I had convinced
4 Mr. Hunter for a change.

5 MR. HUNTER: I am compelled to respond
6 very briefly to Mr. Campbell's comments. I'm a simple
7 man, not comfortable with a large room of policies
8 which Mr. Campbell was addressing.

9 I'm really concerned, and while I agree
10 with him, the purpose of being here today is to address
11 the issue, I think the parties are trying to be very
12 fair and very reasonable with everybody in expressing
13 their concerns to you about the process that we may
14 enter into and I don't think that it is entirely
15 appropriate for Mr. Campbell to try and minimize our
16 expression of those concerns to you by reducing it to
17 some simplistic issue or reduction of issue.

18 But let me address a concern which is
19 really bothering me very much, and I have been involved
20 in NAN for close to ten years now, and I've had to go
21 back over time with respect to a substantial number of
22 planning issues and undertakings by the Ministry, and I
23 am really concerned about the language which is
24 reflected in Mr. Wildman's statement.

25 As I read this document he is saying, I

(Hunter)

1 am going to go ahead and do certain things with respect
2 to forest management and I am going to tell you in two
3 months time what those things are.

4 And for the purposes of this letter he is
5 referring to those things as initiatives. And if one
6 goes back in time to the West Patricia Plan and one
7 goes back in time to the controversy about Reed and one
8 goes back to the issues surrounding the RCNE, what we
9 see are initiatives; not plans, not programs, not
10 things which are captured under the Environmental
11 Assessment Act.

12 So on one hand I see the government
13 saying in the midst of this hearing that we are going
14 to undertake initiatives which are fundamental, we then
15 turn around and hear Mr. Freidin and Mr. Campbell, if I
16 understand him correctly, to say these may or may not
17 be introduced as questions of evidence in this hearing,
18 but don't worry about it because it's not going to
19 affect the Class Assessment that's before you.

20 And I don't understand that fundamental
21 conceptual issue because if these are policies and
22 programs which are now being enunciated and to be
23 initiated by the government, then either they have to
24 be shoehorned into this Class Assessment or there has
25 to be another assessment on those initiatives under the

(Hunter)

1 Environmental Assessment Act, or they have to be
2 exempt. And I still don't understand that fundamental
3 conceptual issue.

4 MADAM CHAIR: Thank you, Mr. Hunter.

5 I think we're going to finish this
6 session now and the Board will be in touch with the
7 parties about where we proceed from here.

8 Mr. Freidin?

9 MR. FREIDIN: Madam Chair, when would be
10 an appropriate time to address you, in about 30
11 seconds, about reply and argument date for February?

12 MADAM CHAIR: What is the problem with
13 February?

14 MR. FREIDIN: It's not a problem, it's
15 just my suggestion, that when you consider what you
16 heard today, it would be my suggestion that the issue
17 of reply and argument and how it would be dealt with
18 might be affected by the negotiation. I would suggest
19 that that be put off until the same time.

20 MADAM CHAIR: I don't think so, Mr. Mr.
21 Freidin. This hearing is going ahead regardless of
22 what happens with the negotiations and the aspects of
23 what sort of limitations the Board will put on reply
24 and argument have nothing to do with the negotiations.

25 MR. FREIDIN: I think we can probably

1 deal with those issues in a general way. We won't be
2 able to deal with it as specifically as we might
3 otherwise have. That's fine, we'll deal with it on
4 February the 14th, if that's the date.

5 MADAM CHAIR: Thank you. See some of you
6 tomorrow morning at nine.

7 ---Whereupon the hearing adjourned at 6:40 p.m., to be
8 reconvened on Thursday, January 31st, 1991,
9 commencing at 9:00 a.m.

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E R R A T A

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For "Sitcus spruce," please read: "Sitka spruce".

For "Ingleman's pine", please read: "Englemann's pine".

For "Jack Lord Thomas", please read: "Jack Ward Thomas".

For "azosperium", please read: "azospirillum".

For "large-pole pine", please read: "lodgepole pine".

